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THE LAW OF  
PARLIAMENTARY ELECTIONS  
AND  
ELECTION PETITIONS,  
WITH  
SUGGESTIONS ON THE CONDUCT AND TRIAL OF AN  
ELECTION PETITION,  
FORMS AND PRECEDENTS,  
AND  
STATUTES BEARING ON THE SUBJECT.

BY  
SIR HUGH FRASER.

A BENCHER OF THE INNER TEMPLE,

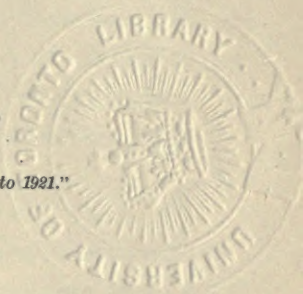
*Author of "The Representation of the People Acts, 1918 to 1921."*

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## PREFACE TO THE THIRD EDITION.

IN preparing the present edition for the press I have thoroughly revised it and brought it up to date. I have made no alteration in the plan or general arrangement of the work.

Some important changes in the law relating to Parliamentary Elections have been introduced by the Representation of the People Act, 1918, and the Statutes amending it, but the main outlines and principles of the law remain substantially unchanged.

The position of Ireland has been fundamentally altered in regard to representation in the House of Commons. By the combined effect of Section 1 (4) of the Irish Free State (Agreement) Act, 1922, and Section 19 and the Fifth Schedule, Part II., of the Government of Ireland Act, 1920, the representation of Ireland in the House of Commons of the Imperial Parliament is confined to Northern Ireland, which returns thirteen members for the eleven Constituencies mentioned in Part II. of the Schedule.

I wish to express my great indebtedness to my friend Mr. Alexander P. Fachiri, Barrister-at-Law, for his invaluable assistance in the preparation of the work and for many useful suggestions. I also wish to thank my friends Mr. G. O. Slade, Barrister-at-Law, for kindly reading the proof sheets, and Mr. C. C. Carus-Wilson, Barrister-at-Law, for his assistance in the preparation of the Table of Cases and Index.

H. F.

1 BRICK COURT,

TEMPLE, E.C.,

*October, 1922.*

## EXTRACT FROM PREFACE TO THE FIRST EDITION.

THE object of this work is to present to the reader the Principles of the Law of Parliamentary Elections and Parliamentary Election Petitions. I have endeavoured to make the book as practical as possible, and have avoided the history of the subject except so far as I have thought it necessary to deal with it in order to make the present law clear. The law is stated in the form of Propositions, followed by Explanatory Notes, in the preparation of which the original authorities have in every case been consulted. Special prominence has been given to the cases dealt with by the Election Petition Judges, and I have set out verbatim those passages in their judgments which lay down the principles governing this branch of the law.

H. F.

TEMPLE, E.C.,

*January 1st, 1906.*



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# THE LAW

OF

## PARLIAMENTARY ELECTIONS

AND

## ELECTION PETITIONS.

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### ART. 1.—Who may be a Candidate.

Anyone may be a candidate for Parliament—except a Peer,<sup>1</sup> other than an Irish Peer, not previously elected to sit as one of the twenty-eight representative Irish Peers in the House of Lords (such Irish Peer, if not so previously elected, is eligible to serve for a county or borough in England, Scotland, or Wales, but not Ireland)<sup>2</sup>; persons holding certain offices<sup>3</sup> and Government contractors<sup>4</sup>; anyone ordained a priest or deacon, or being a minister of the Church of Scotland,<sup>5</sup> or in holy orders in the Church of Rome<sup>6</sup>; an infant<sup>7</sup>; a lunatic<sup>8</sup>; an idiot<sup>9</sup>; a deaf mute<sup>9</sup>; any person who has been adjudged bankrupt in England,<sup>10</sup> unless the adjudication has been annulled or he has obtained his discharge either not less than five years preceding the candidature or with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part<sup>11</sup>; any person whose estate has been sequestrated or with respect to whom a decree of *cessio bonorum* has been pronounced by a competent court in Scotland, unless the sequestration or decree of *cessio* has been recalled or reduced, or he has obtained his discharge from a competent court<sup>12</sup>; an alien or denizen<sup>13</sup>; a person convicted of treason or felony and sentenced

<sup>1</sup> This disqualification does not extend to peeresses. See R. P. Act, 1918, s. 9 (5); *Lady Rhondda's Case* (1922), 38 T. L. R. 759.

<sup>2</sup> Irish Act of Union, 1800, Art. 4.

<sup>3</sup> See Note 1, *infra*.

<sup>4</sup> See Note 2, p. 5, *infra*.

<sup>5</sup> 41 Geo. 3, c. 63.

<sup>6</sup> 10 Geo. 4, c. 7, s. 9.

<sup>7</sup> 7 & 8 Will. 3, c. 25, s. 7 (England); 5 Anne. c. 11, Art. 25 (Scotland); 37 Geo. 3, c. 47, s. 20; and 4 Geo. 4, c. 55, s. 74 (Ireland).

<sup>8</sup> 66 Journ. 687; 49 Vict. c. 16.

<sup>9</sup> *Ibid*.

<sup>10</sup> Anyone adjudged bankrupt in Ireland is nevertheless eligible as a candidate for Parliament, though by

the Irish Bankruptcy Act, 1872, s. 42, if a member of the House of Commons is adjudged bankrupt in Ireland he shall, during one year from the date of the order of adjudication, be incapable of sitting and voting in the House, unless within that time either the order is annulled or the creditors who prove debts under the bankruptcy are fully paid or satisfied.

<sup>11</sup> Bankruptcy Act, 1883, s. 32; Bankruptcy Act, 1890, s. 9.

<sup>12</sup> Bankruptcy Act, 1883, s. 32; Bankruptcy, &c. (Scotland) Act, 1885, s. 5.

<sup>13</sup> 12 & 13 Will. 3, c. 2, s. 3; 7 Anne. c. 5; 4 Geo. 2, c. 21; *Drinkwater v.*

to death or penal servitude or imprisonment, either with hard labour or exceeding twelve months, unless he has suffered such other punishment as by competent authority may be substituted for the same or received a free pardon, or in the case of penal servitude or imprisonment has suffered the punishment to which he has been sentenced<sup>14</sup>; certain persons for a specified period who are convicted of corrupt or illegal practices.<sup>15</sup>

NOTE 1.—Persons holding certain offices.

Under this description come:

(a) Persons having offices or places of profit under the Crown within the meaning of 6 Anne, c. 41, s. 24.<sup>16</sup> This includes any person who has in his own name, or in the name of any person or persons in trust for him or for his benefit, any new office or place of profit under the Crown, created subsequent to October 25, 1705; and, in addition, Commissioners or Sub-Commissioners of Prizes; Secretary or Receiver of Prizes; Comptrollers of Accounts of the Army; Commissioners of Transports; Commissioners of the Sick and Wounded; Agents for any Regiment; Commissioners of Wine Licences; Governors and Deputy-Governors of any of the Colonies<sup>17</sup>; Commissioners of the Navy employed in any of the out-ports; and persons holding pensions from the Crown during pleasure.

All the above persons are disqualified from being elected to the House of Commons,<sup>18</sup> and if elected their election is void.<sup>19</sup>

The following are by special Acts excepted from the operation of the statute:—<sup>20</sup>

The Governor and other officers of the Bank of England,<sup>21</sup> Treasurer or Comptroller of the Navy,<sup>22</sup> Secretaries of the Treasury,<sup>22</sup> Secretary to the Chancellor of the Exchequer,<sup>22</sup> Secretaries of the Admiralty,<sup>22</sup> Deputy Paymaster of the Army,<sup>22</sup> the Land Tax Commissioners,<sup>23</sup> the Commissioners of the Treasury,<sup>24</sup> President of the Board of Trade,<sup>25</sup> Members of the Council of the Lord High Admiral,<sup>26</sup> Five Lords of the Admiralty,<sup>27</sup> Paymaster-General,<sup>28</sup> First Church Estate Commissioner,<sup>29</sup> First Commissioner of Works,<sup>30</sup> Postmaster-General,<sup>31</sup> Master and Worker of the Mint

*Deakin* (1874), L. R. 9 C. P. 626; *Tipperary* (1875), 3 O. & H. 36; and see Note 3, p. 5, *infra*.

<sup>14</sup> Forfeiture Act, 1870, s. 2. This has no application to Scotland; *ib.* s. 33.

<sup>15</sup> See Note 4, p. 5, *infra*.

<sup>16</sup> 6 Anne, c. 7, s. 25, in *Ruffhead*.

<sup>17</sup> See 35 Journal, 63, and 47 Journal, 46.

<sup>18</sup> 6 Anne, c. 41, s. 24.

<sup>19</sup> *Ibid.* s. 28.

<sup>20</sup> *I.e.*, 6 Anne, c. 41, s. 24.

<sup>21</sup> 15 Geo. 2, c. 13, s. 8.

<sup>22</sup> 15 Geo. 2, c. 22, s. 3.

<sup>23</sup> 42 Geo. 3, c. 116, s. 185.

<sup>24</sup> 56 Geo. 3, c. 98.

<sup>25</sup> 7 Geo. 4, c. 32.

<sup>26</sup> 7 & 8 Geo. 4, c. 65, s. 5.

<sup>27</sup> 2 & 3 Will 4, c. 40, s. 1.

<sup>28</sup> 5 & 6 Will 4, c. 35, s. 5.

<sup>29</sup> 13 & 14 Vict. c. 94, s. 3.

<sup>30</sup> 14 & 15 Vict. c. 42, s. 20.

<sup>31</sup> 29 & 30 Vict. c. 55.



(now the Chancellor of the Exchequer),<sup>1</sup> Surveyor-General of the Ordnance,<sup>2</sup> Financial Secretary of the War Office,<sup>3</sup> President and one of the Secretaries of the Local Government Board,<sup>4</sup> Secretary for Scotland,<sup>5</sup> President of the Board of Agriculture,<sup>6</sup> President of the Board of Education and one Secretary of the Board,<sup>7</sup> Assistant Postmaster-General,<sup>8</sup> one Secretary of the Board of Agriculture and Fisheries,<sup>9</sup> Chairman of Joint Committee of Insurance Commissioners,<sup>10</sup> Minister of Pensions and one of the Secretaries of the Ministry,<sup>11</sup> Minister of Labour and one Secretary of the Ministry,<sup>12</sup> five Principal Secretaries of State and five Under-Secretaries.<sup>13</sup>

In this connection it may be convenient to deal briefly with sect. 25 of the statute 6. Anne, c. 41, although that section does not relate to disqualification from election, but to the avoidance of the election of members of the House of Commons who, since their election, accept an office of profit. Section 25 provides that "if any person being chosen a member of the House of Commons shall accept of any office of profit from the Crown during such time as he shall continue a member, his election shall be void, and a new writ shall issue for a new election, as if such person so accepting was naturally dead: provided nevertheless, that such person shall be capable of being again elected, as if his place had not become void as aforesaid."

It will be observed that although the words "any office of profit" are general, they must necessarily be construed as embracing only offices of profit other than a new office of profit within sect. 24, as otherwise sect. 25 would be inconsistent with and, in effect, a partial repeal of sect. 24.

The result of the two sections taken together is to render the holder of a *new* office incapable of ever being a member, whereas the holder of an *old* office, if a member when he accepts it, must submit himself to re-election.

By sect. 52 of the Representation of the People Act, 1867, it is provided that "where a person has been returned (*i.e.*, re-elected) as a member to serve in Parliament since the acceptance by him from the Crown of any office described in Schedule (H) to this Act annexed, the subsequent acceptance by him of any other office or offices described in such Schedule in lieu of and in immediate succession the one to the other shall not vacate his seat."

In addition to the offices described in Schedule (H) (which are the principal offices in the Ministry) the following offices have, by

<sup>1</sup> 33 Vict. c. 10, s. 14.

<sup>2</sup> 33 & 34 Vict. c. 17, s. 2.

<sup>3</sup> *Ibid.* s. 3.

<sup>4</sup> 34 & 35 Vict. c. 70, s. 4.

<sup>5</sup> 48 & 49 Vict. c. 61, s. 3.

<sup>6</sup> 52 & 53 Vict. c. 30, s. 8. (1).

<sup>7</sup> 62 & 63 Vict. c. 33, s. 8.

<sup>8</sup> 9 Edw. 7, c. 14.

<sup>9</sup> 9 Edw. 7, c. 15, s. 1 (2).

<sup>10</sup> 1 & 2 Geo. 5, c. 55, s. 83 (1).

<sup>11</sup> 6 & 7 Geo. 5, c. 65, s. 7.

<sup>12</sup> 6 & 7 Geo. 5, c. 68, s. 12.

<sup>13</sup> 7 & 8 Geo. 5, c. 51, s. 11.

special Acts, been added thereto and must be treated as if they were included in the Schedule :

President of the Board of Agriculture,<sup>14</sup> President of the Local Government Board,<sup>15</sup> Secretary for Scotland,<sup>16</sup> President of the Board of Education,<sup>17</sup> Minister of Pensions,<sup>18</sup> Minister of Labour.<sup>19</sup>

It should further be noticed that by sect. 27 of 6 Anne, c. 41, a member of the House of Commons, being an officer in the navy or army, who receives any new or other commission in the navy or army respectively, does not vacate his seat.

(b) *Pensioners of the Crown during a term of years.*<sup>20</sup>

(c) *Members of the Council of India.*<sup>21</sup>

(d) *Commissioners and officials of various public offices and departments,*<sup>22</sup> *and the deputies or clerks in various public offices.*<sup>23</sup>

(e) *Judges of the Court of Appeal,*<sup>24</sup> *the High Court,*<sup>25</sup> *and the County Court.*<sup>26</sup>

(f) *Judges of Court of Session.*<sup>27</sup>

(g) *Scots sheriffs-principal,*<sup>28</sup> *sheriff-substitutes,*<sup>29</sup> *sheriff-clerks and deputy sheriff-clerks for the shires in which they hold office,*<sup>29</sup> *town clerks and deputy town clerks for the cities, burghs, towns, and districts in which they are such clerks.*<sup>29</sup>

(h) *Judges of the Court of Bankruptcy in Ireland.*<sup>30</sup>

(i) *Recorders for the boroughs of which they are Recorders,*<sup>1</sup> *and Stipendiaries.*<sup>2</sup>

<sup>14</sup> 52 & 53 Vict. c. 30, s. 8 (1).

<sup>15</sup> 34 & 35 Vict. c. 70, s. 4.

<sup>16</sup> 48 & 49 Vict. c. 61, s. 3.

<sup>17</sup> 62 & 63 Vict. c. 33, s. 8.

<sup>18</sup> 6 & 7 Geo. 5, c. 65, s. 7.

<sup>19</sup> 6 & 7 Geo. 5, c. 68, s. 12.

<sup>20</sup> 1 Geo. 1, stat. 2, c. 56.

<sup>21</sup> 21 & 22 Vict. c. 106, s. 12.

<sup>22</sup> 15 Geo. 2, c. 23, s. 1 (Navy and Victualling Offices); 55 Geo. 3, c. 46, s. 8 (Auditor of the Civil List); 10 Geo. 4, c. 44, s. 18 (Receiver for Metropolitan Police District); 2 & 3 Vict. c. 94, s. 7 (City of London Police); 14 & 15 Vict. c. 42, s. 10 (Woods); 16 & 17 Vict. c. 137, s. 5 (Charitable Trust); 17 & 18 Vict. c. 117, s. 11 (West Indian Incumbered Estates); 19 & 20 Vict. c. 2, s. 9; 47 & 48 Vict. c. 17 (England, Metropolitan Police); 29 & 30 Vict. c. 39, s. 3 (Exchequer); 51 & 52 Vict. c. 41, s. 83 (13) (County Council); 1 & 2 Will. 4, c. 33, s. 11 (Ireland, Public Works); 6 & 7 Will. 4, c. 13, s. 18; 48 Geo. 3, c. 140, s. 41; 6 & 7 Will. 4, c. 29, s. 19 (Ireland, Constabulary); 15 Geo. 2, c. 22, s. 1; 33 Geo. 3, c. 41, s. 1 (Ireland, Revenue); 41 Geo. 3, c. 52, s. 4 (Ireland, agent

of any regiment and collectors of aids granted Sovereign by Parliament); 48 Geo. 3, c. 140, s. 14; 6 & 7 Will. 4, c. 29, s. 19 (Dublin Police); 2 & 3 Will. 4, c. 87, s. 36 (Ireland, Registrar of Deeds); 12 & 13 Vict. c. 91, s. 24 (Dublin, Collector-General and his Officers); 44 & 45 Vict. c. 49, s. 54 (Ireland, Land Commissioners, Assistant Commissioners and Officers); 15 Geo. 2, c. 22, s. 1 (Gibraltar).

<sup>23</sup> 15 Geo. 2, c. 22, s. 1; 41 Geo. 3, c. 52, s. 4; 51 & 52 Vict. c. 41, s. 83 (13) (County Council).

<sup>24</sup> 38 & 39 Vict. c. 77, s. 5 (England); 40 & 41 Vict. c. 57, s. 13 (Ireland).

<sup>25</sup> *Ibid.*

<sup>26</sup> 25 & 26 Vict. c. 99, s. 4 (England); 14 & 15 Vict. c. 57, s. 2 (Ireland).

<sup>27</sup> 7 Geo. 2, c. 16, s. 14.

<sup>28</sup> 21 Geo. 2, c. 19, s. 11.

<sup>29</sup> 2 & 3 Will. 4, c. 65, s. 36.

<sup>30</sup> 20 & 21 Vict. c. 60, s. 14.

<sup>1</sup> 45 & 46 Vict. c. 50, s. 163 (6) (England); 3 & 4 Vict. c. 108, s. 166 (Ireland).

<sup>2</sup> 6 Anne, c. 7, s. 25.



(j) *Justices of the peace appointed under the Metropolitan Police Act, 1822.*<sup>3</sup>

(k) *Election commissioners.*<sup>4</sup>

(l) *Registrars and officers of the Bankruptcy Court.*<sup>5</sup>

(m) *Receivers appointed under the Metropolitan Police Act, 1822.*<sup>6</sup>

(n) *Registrars of deeds.*<sup>7</sup>

(o) *Returning officers,*<sup>8</sup> *except in those cases where all the duties of the returning officer are discharged by the acting returning officer.*<sup>9</sup>

NOTE 2.—*Government contractors.* The statute 22 Geo. 3, c. 45, s. 1, disqualifies from election "any person who shall directly or indirectly himself or by any person whatsoever in trust for him, or for his use or benefit or on his account, undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement or commission made or entered into with, under, or from the Commissioners of His Majesty's Treasury, or of the Navy or victualling office, or with the Master-General or Board of Ordnance, or with any one or more of such Commissionsers, or with any other person or persons whatsoever, for or on account of the public service."

The effect of this provision has been discussed in a number of reported cases.<sup>10</sup>

With the development of Government trading in recent times, the importance of candidates considering this enactment has increased.

NOTE 3.—*An alien or a denizen.* An alien who has been naturalised either by a private Act of Parliament<sup>11</sup> or by a certificate of naturalisation<sup>12</sup> is eligible for Parliament. A denizen is an alien who has been made an English subject by letters patent *ex donatione regis*.

NOTE 4.—*Certain persons for a specified period who have been convicted of corrupt or illegal practices.* As to what constitutes a corrupt practice and an illegal practice, see Arts. 19 and 26, pp. 91 and 143, respectively.

Where upon the trial of an election petition respecting an election for a county or borough the election court reports that any corrupt practice other than treating and undue influence has been proved to have been committed in reference to an election *by or with the knowledge and consent of a candidate*, or that the offence of treating or undue influence has been proved to have been committed *by a*

<sup>3</sup> 10 Geo. 4, c. 44, s. 18.

<sup>4</sup> 15 & 16 Vict. c. 57, s. 1.

<sup>5</sup> 46 & 47 Vict. c. 52, s. 116 (1).

<sup>6</sup> 10 Geo. 4, c. 44, s. 18.

<sup>7</sup> 7 Anne, c. 20, s. 21.

<sup>8</sup> *Thetford*, 9 Journal, 725; *Wakefield*, B. & Aust. 295.

<sup>9</sup> Representation of the People Act,

1918, s. 30.

<sup>10</sup> See, e.g., *Thompson v. Pearce* (1819), 1 B. & B. 25; *Royse v. Birley* (1869), L. R. 4 C. P. 296; *In re Samuel*, [1913] A. C. 514; *Tranton v. Aster* (1917), 33 T. L. R. 383.

<sup>11</sup> *Cheltenham* (1880), 3 O. & H. 86.

<sup>12</sup> 4 & 5 Geo. 5, c. 17, s. 3.

*candidate*, he is *for ever* incapable of representing that constituency, and also incapable of representing any other constituency *for seven years* from the date of the report of the election court, and if he has been elected his election shall be void.<sup>13</sup> Where the election court reports that *any candidate* at such election has been guilty *by his agents* of any corrupt practice in reference to such election that candidate shall not be capable of being elected to or sitting in the House of Commons for such county or borough *for seven years* after the date of the report, and if he has been elected his election shall be void.<sup>14</sup>

*Any person* convicted on indictment of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.<sup>15</sup>

The like incapacity for election as a member of the House of Commons results from being convicted or reported guilty of any corrupt practice at a municipal<sup>16</sup> election, or at an election of members of a school board or of improvement commissioners,<sup>17</sup> or of a parish or district council or of a board of guardians,<sup>18</sup> or county council.<sup>19</sup>

The like incapacity results from the finding of the like offences at an election to any corporate office in Scotland<sup>20</sup>; but a candidate found *guilty by his agents* of *treating* or *undue influence* at an election to a corporate office in Scotland may be exonerated from this incapacity, *inter alia*, upon the same grounds upon which a candidate may be exonerated in respect of the like offences at a parliamentary election.<sup>21</sup> "Corporate office" "means the office of county councillor, town councillor, or police commissioner of a burgh, member of parochial board, or member of school board." <sup>22</sup> "Burgh" "includes royal burgh, parliamentary burgh, burgh of barony, burgh of regality, police burgh under any general police Act, and the burgh of Coatbridge in the county of Lanark." <sup>22</sup>

Where an election court reports that any *illegal practice* has been committed in reference to an election for a county or borough *by or with the knowledge and consent of any candidate*, that candidate is incapacitated from being elected for the said county or borough *for seven years* from the date of the report, and if he has been elected, his election shall be void.<sup>23</sup>

<sup>13</sup> Corrupt Practices Act, 1883, ss. 4, 6 (4).

<sup>14</sup> *Ibid.* s. 5.

<sup>15</sup> *Ibid.* s. 6 (4).

<sup>16</sup> 47 & 48 Vict. c. 70, ss. 2 (2), 3 (1), 23.

<sup>17</sup> *Ibid.* s. 36.

<sup>18</sup> 51 & 52 Vict. c. 41, s. 75.

<sup>19</sup> 56 & 57 Vict. c. 73, s. 48 (3).

<sup>20</sup> 53 & 54 Vict. c. 55, ss. 3, 4 (1).

<sup>21</sup> *Ibid.* ss. 23, 49.

<sup>22</sup> *Ibid.* s. 2.

<sup>23</sup> Corrupt Practices Act, 1883, s. 11 (a).



Where an election court reports that a *candidate* has been *guilty by his agents* of any *illegal practice* in reference to an election for a county or borough, that candidate is incapacitated from election for the said county or borough during the Parliament for which the election was held, and if he has been elected, his election shall be void,<sup>24</sup> but, unless the agent is the election agent, this has no application<sup>25</sup> where the illegal practice consists of— (a) any person voting or inducing or procuring any person to vote knowing that he or such person is prohibited from voting, or (b) any person knowingly publishing a false statement of the withdrawal of a candidate for the purpose of promoting or procuring the election of another candidate.

A candidate who is personally guilty of an offence of incurring expenses in excess of any maximum amount specified by the Corrupt Practices Act, 1883,<sup>26</sup> printing, publishing or posting a bill-poster or placard without the name and address of the printer and publisher thereof,<sup>27</sup> or of illegal payment, employment, or hiring, is guilty of an illegal practice, and is incapacitated from being elected for the county or borough in question *for seven years*.<sup>28</sup> A candidate whose election agent is personally guilty of such an offence is incapacitated from being elected for the county or borough in question during the Parliament for which the election was held.<sup>28</sup>

As to when relief will be granted see pp. 188—200, *infra*.

Any person who is *reported by any election court or election commissioners* to have been guilty of any corrupt or illegal practice at an election shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty: provided that a report of election commissioners shall not avoid the election of any candidate who has been declared by an election court to have been duly elected, nor render him incapable of sitting in the House of Commons for the said county or borough during the Parliament for which he was elected.<sup>29</sup>

#### ART. 2.—Election only held in Pursuance of a Writ.

A *parliamentary election* may be caused—(1) by a dissolution of Parliament which takes place after the lapse of five years from its commencement or before that time by the exercise of the royal prerogative on the advice of ministers, in which case every seat becomes vacant<sup>30</sup>; or (2) by a vacancy in a particular seat, which

<sup>24</sup> Corrupt Practices Act, 1883,  
s. 11 (b).

<sup>25</sup> *Ibid.* s. 9.

<sup>26</sup> *Ibid.* s. 8.

<sup>27</sup> *Ibid.* s. 18.

<sup>28</sup> *Ibid.* s. 21 (2).

<sup>29</sup> *Ibid.* s. 5.

<sup>30</sup> Septennial Act, 1 Geo. 1, stat. 2,

may be caused (a) by a member accepting an office of profit from the Crown, (b) by his elevation or succession to the peerage, (c) by his death, (d) by his being adjudicated a bankrupt, (e) by his being disqualified when elected, (f) by his being returned for more than one constituency, (g) by his being unseated on petition, (h) by his expulsion.

In case (1) a general election is held. A warrant or order is issued by the King, with the advice of the Privy Council, and in pursuance of a royal proclamation to the Lord High Chancellor of Great Britain and to the Lord High Chancellor of Ireland, or to the Lords Keepers or Lords Commissioners of the Great Seal if it is in commission, commanding them to cause writs to be issued for the election of members to serve in Parliament, and writs are accordingly issued in Great Britain by the Clerk of the Crown in Chancery, and in Ireland by the Clerk of the Crown in Hanaper, and they are respectively returnable into the offices of the said clerks.

In case (2), i.e., where there is a vacancy in a particular constituency only, the vacancy may occur either during session or during recess by prorogation or adjournment of the House. In the former case the House, on the motion<sup>1</sup> of any member, seconded by another, orders the Speaker to sign a warrant to the Clerk of the Crown in Chancery or to the Clerk of the Crown in Hanaper, to issue a writ<sup>2</sup> for electing a member to serve in the place of him whose seat has become vacant.

If the vacancy occurs during the recess, the Speaker has power, in cases (a), (b), (c), (d) only, to issue a warrant to the Clerk of the Crown to make out a new writ for election of a member in the room of the member whose seat is vacated.

The Speaker shall not, however, during the recess issue a warrant, unless the application for it is made so long before the next meeting of the House for the despatch of business as that the writ for the election may be issued before such meeting; and, further, in cases (a), (b) and (c) above, he shall not do so unless—(1) the return of the member whose seat is vacated shall have been brought into the office of the Clerk of the Crown fifteen days at least before the end of the last sitting of the House, and (2) there is no petition against the return or election of the member whose seat has become vacant pending at the time of the prorogation or adjournment.<sup>3</sup>

The Speaker must at the beginning of each Parliament appoint a certain number of members, not exceeding seven and not less than

c. 38, as amended by Parliament Act, 1911, s. 7.

<sup>1</sup> Such motions take precedence over other business as relating to privilege of Parliament: May's Parl. Prac. 10th ed. pp. 599–600.

<sup>2</sup> For form of writ, see Ballot Act, 1872, Second Schedule.

<sup>3</sup> 24 Geo. 3, c. 26, s. 4; 21 & 22 Vict. c. 110, s. 5; Bankruptcy Act, 1883, s. 33 (2).



three, to execute his duties with reference to the issue of writs during any recess in the case of his death, the vacating of his seat, or his absence from the realm.

Such appointment stands good during the existence of such Parliament; but if the number should be reduced to less than three, then the Speaker must appoint another or others as before.<sup>33</sup>

The writ is delivered to the returning officer or his deputy—(a) in the Metropolitan District by the Messenger of the Great Seal; (b) outside the Metropolitan District by the nearest postmaster or his deputy.

NOTE 1.—A vacancy in a particular seat may be caused by a member accepting an office of profit from the Crown. The Speaker may, during any recess, issue his warrant to the Clerk of the Crown to make out a new writ for election of a member in the room of any member who has, since the adjournment or prorogation, accepted any disqualifying office, so soon as he shall have been gazetted thereto in any of the King's gazettes, and notice thereof, together with a copy of the gazette, shall have been sent to the Speaker by a certificate under the hands of two members; provided, however, that the member accepting the office shall forthwith notify the same to the Speaker either by writing under his hand or by countersigning the certificate. And the Speaker shall not issue his warrant without such notification, and until six days after he shall have caused notice of his having received the certificate and notification to be inserted in the "London Gazette."<sup>4</sup>

The Speaker may, if it appears doubtful to him whether the acceptance of the office vacates the seat, reserve the question for the decision of the House instead of issuing his warrant.<sup>5</sup>

NOTE 2.—By his being adjudicated a bankrupt. If a member of the House of Commons be adjudged a bankrupt, he is thereby disqualified for sitting or voting in the House, unless (a) the order for adjudication is annulled, or (b) he obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.<sup>6</sup> No such disqualification arising from bankruptcy shall, however, exceed a period of five years from the date of the bankrupt's discharge.<sup>7</sup>

If within six months from the date of the adjudication such disqualification is not removed, the Court shall immediately after such time certify the same to the Speaker, and thereupon the seat

<sup>33</sup> 24 Geo. 3, c. 26, ss. 5, 6; 21 & 22 Vict. c. 110, s. 5; Bankruptcy Act, 1863, s. 33 (3).

<sup>4</sup> 21 & 22 Vict. c. 110, ss. 1, 2; 26 & 27 Vict. c. 20. The formal offices which members take in order to effect a resignation of their seats in Parliament are excepted from the operation

of the Acts. See 21 & 22 Vict. c. 110, s. 4. These offices are the Stewardships of the Chiltern Hundreds, of East Hendred, Hempholme, Northstead, and the escheatorship of Munster.

<sup>5</sup> 21 & 22 Vict. c. 110, s. 3.

<sup>6</sup> Bankruptcy Act, 1883, s. 32 (1) (b).

<sup>7</sup> Bankruptcy Act, 1890, s. 9.

of such member shall become vacant<sup>8</sup> and if the seat so becomes vacant during recess, the Speaker shall forthwith, on receipt of such certificate, cause notice thereof to be published in the "London Gazette," and after the expiration of six days from the time of such publication, shall (unless the House has met before that day, or will meet on the day of the issue) issue his warrant to the Clerk of the Crown to make out a new writ.<sup>9</sup>

In the case of a Scotch seat the above provisions, in a slightly altered form, are applicable.<sup>10</sup>

In the case of an Irish seat, if a member of the House of Commons be adjudged a bankrupt he shall remain during one year from the date of adjudication incapable of sitting and voting, unless within that time either the order of adjudication is annulled or the creditors are fully paid or satisfied. If within such time the adjudication is not annulled or the debts paid or satisfied, the Court shall immediately after such time certify the same to the Speaker, and thereupon the seat of such member shall become vacant.<sup>11</sup>

NOTE 3.—*By his being disqualified when elected.* As to what amounts to a disqualification, see Art. 1, *supra*, pp. 1—7.

NOTE 4.—*By his being returned for more than one constituency.* When a member, before taking his seat, is returned for two or more constituencies, he must elect to sit for one of them within one week after the time limited for presenting petitions to the Court against his return has expired; provided that no petition has, in the meanwhile, been presented against him.<sup>12</sup> If either return has been petitioned against, he cannot make his choice until the petition is dismissed.<sup>13</sup>

NOTE 5.—*By his being unseated on petition.* When a member is unseated on petition, the motion may be made as soon as the House, on being informed by the Speaker that he has received a certificate from the judges who tried the petition that such member was not duly elected, recommends that "a new writ ought to issue"; provided that previous notice of such motion has been given in the votes.<sup>14</sup> If, however, the notice should be dropped, it must be renewed like other dropped notices.<sup>15</sup>

NOTE 6.—*By his expulsion.* When the House resorts to the extreme measure of expelling a member, reasonable notice is given of the motion to be made for his expulsion on the day fixed; and, if

<sup>8</sup> Bankruptcy Act, 1883, s. 33 (1).

<sup>9</sup> *Ibid.* s. 33 (2).

<sup>10</sup> Bankruptcy Frauds and Disabilities (Scotland) Act, 1884, ss. 5, 6.

<sup>11</sup> Bankruptcy (Ireland) Amendment Act, 1872, s. 41.

<sup>12</sup> See *infra*, pp. 203, 204.

<sup>13</sup> May's Parl. Pract. 11th ed. p. 652.

<sup>14</sup> Resolution of April 5, 1848; May's Parl. Pract. 11th ed. pp. 631, 635; Parliamentary Elections and Corrupt Practices Act, 1879, s. 2.

<sup>15</sup> *Sligo*, June 28, 1848; 99 Hans. 1289.



possible, an order is served upon him to attend in his place on that day. But whether any service is effected or not, and whether he attends or absents himself, the motion may be made when the day arrives.<sup>16</sup>

NOTE 7.—*The writ is delivered to the returning officer or his deputy (a) in the Metropolitan District by the Messenger of the Great Seal; (b) outside the Metropolitan District by the nearest postmaster or his deputy. In order that the post office may be able to deliver the writs, the returning officers are required to send their addresses to the Postmaster-General. Those within the metropolitan area must send their address to the Messenger of the Great Seal.*<sup>17</sup>

The officer receiving the writ must give to the person delivering it a receipt in writing, setting forth the day and hour the writ was delivered to him.<sup>17</sup>

With the object of obtaining freedom of election it is provided by statute<sup>18</sup> that the Clerk of the Crown or other officer making out any new writ shall, as soon as the writ has been made out, give notice to the Secretary or Under-Secretary for War, and he to the general commanding in the district, who is to see that no soldier within two miles of the place of election or poll, other than any soldiers attending as guards on his Majesty or employed or stationed within the Bank of England, shall be allowed to go out of barracks on the day of nomination or of polling, unless to mount or relieve guard or give his vote at the election, and that, going out for such purpose, he shall return with all convenient speed.

### ART. 3.—The Returning Officer.

*At an election (other than a university election) in England the returning officer is:—(1) in the case of a parliamentary county which is coterminous with or wholly contained in one administrative county, the sheriff; (2) in the case of a parliamentary borough which is coterminous with or wholly contained in a county of a city or town having a sheriff, the sheriff, and in the case of the City of London, the sheriffs; (3) in the case of a parliamentary borough which is coterminous with or wholly contained in one municipal borough (not being a county of a city or town having a sheriff), or one metropolitan borough, or one urban district, the mayor or chairman of the council, as the case requires; and (4) in any other case, such sheriff, mayor or chairman as may be designated for the purpose by the Local Government Board.*<sup>19</sup>

<sup>16</sup> Hans. 1187: 16 *ibid.* 561; 184 *ibid.* February 16, 1857. He is re-eligible immediately: 38 *Journal*, 977.

<sup>17</sup> 53 *Geo.* 3, c. 89.

<sup>18</sup> 10 & 11 *Vict.* c. 21, ss. 2, 3, 4.

<sup>19</sup> Representation of the People Act, 1918, s. 28. For officer designated by

the Local Government Board, see Returning Officers Order, 1918 (*S. R. O.* 1918, No. 1220). This order is set out in the Author's "Representation of the People Acts, 1918 to 1921," at pp. 452–453.

In Scotland the returning officer is the sheriff of the sheriffdom within which the constituency is wholly situated, or when the constituency is situated in more than one sheriffdom, the sheriff specified in the seventh schedule to the Representation of the People Act, 1918.<sup>20</sup>

In Ireland,<sup>21</sup> (1) in a county, county of a city or county of a town, the sheriff for such county, county of a city or county of a town is respectively the returning officer. In a division of any such county or county of city or town which is a separate constituency<sup>22</sup> the sheriff of such county, county of a city or town is respectively the returning officer; (2) in municipal boroughs, other than cities and towns being counties of themselves, the mayor is the returning officer<sup>23</sup>; (3) in boroughs in which there is no mayor and which are not counties of cities or towns, the returning officer is the sheriff of the county in which the whole or greater part of the borough is situate.<sup>24</sup>

In England, when the sheriff of a county dies before the expiration of his year of office or before he is lawfully superseded, the undersheriff by him appointed shall nevertheless continue in office and shall, until another sheriff is appointed for the said county and has made the declaration of office, execute the office of sheriff, in the name of the deceased sheriff, and be answerable for the execution of the said office as the deceased sheriff would by law have been if living.<sup>25</sup> When the sheriff of a county of a city or a county of a town other than London dies or becomes incapable of performing the duties of his office, the council of the said city or town shall forthwith appoint another fit person to execute the office.<sup>26</sup>

In England and Ireland whenever from temporary vacancy or some other cause there is no person duly qualified to perform the duties of returning officer for a borough, city or town, the sheriff of the county in which such place is situate is charged with the execution of the writ and must do all things incidental to the office of returning officer. He must not receive or execute any writ, however, unless there shall be no person legally qualified and competent to act as returning officer.<sup>27</sup>

A person once appointed cannot resign; he is compellable to serve until the end of the current year, unless incapacitated by illness or other sufficient cause.<sup>28</sup>

<sup>20</sup> R. P. Act, 1918, s. 43 (13).

<sup>21</sup> R. P. Act, 1918, s. 44 (10). By the Irish Free State (Agreement) Act, 1922, s. 1 (4), the representation of Ireland other than Northern Ireland has ceased. For the constituencies of Northern Ireland and the number of members which they return to the Imperial Parliament, see Government of Ireland Act, 1920, s. 19, and Fifth

Sch., Pt. II.

<sup>22</sup> 2 & 3 Will. 4, c. 45, s. 66.

<sup>23</sup> 3 & 4 Vict. c. 108, s. 84.

<sup>24</sup> 3 & 4 Vict. c. 108, s. 84; 22 Vict. c. 14, s. 1.

<sup>25</sup> Sheriffs Act, 1887, s. 25 (1).

<sup>26</sup> *Ibid.* s. 36 (1).

<sup>27</sup> 17 & 18 Vict. c. 57, s. 1 (England); 25 & 26 Vict. c. 92, s. 3 (Ireland).

<sup>28</sup> Wakefield, Bur. & Aust. 271.



The duties of returning officer at all elections (other than university elections) in England are, except in so far as the returning officer may reserve all or any of such duties to himself and undertake to perform them in person, discharged by the registration officer<sup>29</sup> as acting returning officer, and the acting returning officer has all the powers, duties, rights and liabilities of the returning officer.<sup>30</sup> The acting returning officer has power to appoint deputies.<sup>31</sup>

The return is made by a certificate of the name of the member or members elected, endorsed by the returning officer on the writ of election.<sup>6</sup>

In Irish elections, in addition to the names of the candidates, the number of the votes given for each candidate must also be endorsed on the writ.<sup>7</sup>

At university elections the following are the returning officers:—

(1) In the case of the Oxford, Cambridge and London University constituencies respectively, the Vice-Chancellor of the University.

(2) In the case of the combined English University constituency,<sup>1</sup> the Vice-Chancellor, Principal or Corresponding Officer of such university, being one of the combined universities, as may be from time to time appointed by the Board of Education for that purpose.

(3) In the case of the University of Wales, the Vice-Chancellor of the University.<sup>2</sup>

(4) In the case of the combined Scottish University constituency,<sup>3</sup> the Vice-Chancellor of the University of Edinburgh.<sup>4</sup>

(5) In the case of the Queen's University of Belfast constituency, the president of the University.<sup>5</sup>

NOTE.—*Duties and rights of the returning officer.* The returning officer is bound (and this, of course, applies equally to the acting returning officer), under stringent penalties, to make a true return.

Every returning officer in England and Wales who wilfully makes a return contrary to the last determination of the House of Commons respecting the right of election in the place concerned, is to be adjudged guilty of a false return;<sup>6</sup> and is liable, together with those who procure it to be made, to be sued, within two years after the cause of action arises, in any of the superior courts for double damages and full costs of suit, by any person duly elected at the

<sup>29</sup> R. P. Act, 1918, s. 12.

<sup>30</sup> R. P. Act, 1918, s. 30.

<sup>31</sup> *Ibid.*

<sup>1</sup> For the universities constituting this constituency, see R. P. Act, 1918, s. 37 (3), and Ninth Sch., Pt. III.

<sup>2</sup> R. P. Act, 1918, s. 36 (1), and Fifth Sch., Pt. I., cl. 1.

<sup>3</sup> The universities forming this constituency are mentioned in the R. P. Act, 1918, Ninth Sch., Pt. III.

<sup>4</sup> R. P. Act, 1918, s. 36 (1), and

Fifth Sch., Pt. II., cl. 1.

<sup>5</sup> Redistribution of Seats (Ireland) Act, 1918, s. 5 (2). This is now the only Irish University represented in the Imperial Parliament. See footnote (21) on preceding page.

<sup>6</sup> Ballot Act, 1872, First Sch., r. 44; Home Office Abstract, para. 45; as to Scotland, see 2 & 3 Will. 4, c. 65, s. 34.

<sup>7</sup> 1 Geo. 4, c. 11, s. 4; 4 Geo. 4, c. 55, s. 71.

<sup>8</sup> 7 & 8 Will. 3, c. 7, s. 1.

election.<sup>9</sup> In *Carnarvon*,<sup>10</sup> where the returning officer made a colourable majority by adding up the tendered and disallowed votes together with those which were allowed, the return was in consequence pronounced fraudulent. A returning officer is also liable to the penalty mentioned above if he wilfully, falsely, and maliciously return more persons than are required to be chosen by the writ.<sup>11</sup>

Further, if a returning officer wilfully delays, neglects, or refuses duly to return any person, such person may, after obtaining a decision on the hearing of an election petition under the Parliamentary Elections Act, 1868, that he ought to have been returned, sue the returning officer and recover double damages, with costs of the action; provided that the action is commenced within a year of the offence complained of, or within six months after the conclusion of the trial of the election petition.<sup>12</sup>

The returning officer is liable, in England, in common with other persons, to forfeit £100 for any wilful breach of any of the provisions in the Parliamentary Voters Registration Act, 1843,<sup>13</sup> and by sect. 11 of the Ballot Act, 1872, every returning officer, presiding officer, and clerk, who is guilty of any wilful act or omission in contravention of the Ballot Act, is liable, in addition to any penalty, to forfeit £100.<sup>14</sup>

The action can only be brought after an election petition has been tried under the Parliamentary Elections Act, 1868.<sup>15</sup> If, therefore, an election is now inquired into by a select committee of the House of Commons it would seem that no action could be brought against a returning officer, for an action will not lie at common law either for a double or a false return.<sup>16</sup>

*Charges of the returning officer.*—By the Representation of the People Act, 1918, s. 29, provision is made for the payment of the reasonable expenses of the returning officer, not exceeding the scale of maximum charges prescribed by the Treasury,<sup>17</sup> out of the Consolidated Fund.<sup>18</sup>

In the case of university elections, the expenses reasonably incurred by the returning officer are repaid by the universities concerned.<sup>19</sup>

<sup>9</sup> 7 & 8 Will. 3, c. 7, ss. 2, 6.

<sup>10</sup> P. & K. 106; C. & R. 127.

<sup>11</sup> 7 & 8 Will. 3, c. 7, s. 3.

<sup>12</sup> 31 & 32 Vict. c. 125, s. 48.

<sup>13</sup> Sect. 97; as to Ireland, see 13 &

14 Vict. c. 69, s. 103.

<sup>14</sup> *Pickering v. James* (1873), L. R. 8 C. P. 489.

<sup>15</sup> See s. 48 of that Act.

<sup>16</sup> *Bernardistone v. Some* (1673),

2 Lev. 114; *Prideau v. Morrice* (1702), 7 Mod. 14.

<sup>17</sup> The scale at present in force is contained in a Treasury Order, dated Oct. 23, 1922 (S. R. O. 1922, (No. 1151)).

<sup>18</sup> See R. P. (Returning Officers' Expenses) Act, 1919, s. 1.

<sup>19</sup> R. P. Act, 1918, Fifth Sch., Pt. I., cl. 26; Pt. II., cl. 34 (Scotland).



*Publication of summary of return of election expenses.*—The returning officer at an election, within ten days after he receives from the election agent of a candidate a return respecting election expenses, must publish a summary of the return in not less than two newspapers circulating in the county or borough for which the election was held, accompanied by a notice of the time and place at which the return and declarations (including the accompanying documents) can be inspected.<sup>20</sup>

The return and declarations (including the accompanying documents) sent to the returning officer by an election agent must be kept at the office of the returning officer, or some convenient place appointed by him, and must at all reasonable times during two years next after they are received by the returning officer be open to inspection by any person on payment of a fee of one shilling, and the returning officer shall on demand furnish copies thereof or any part thereof at the price of twopence for every seventy-two words. After the expiration of the said two years the returning officer may cause the said return and declarations (including the accompanying documents) to be destroyed, or, if the candidate or his election agent so require, must return the same to the candidate.<sup>21</sup>

See further as to the duties of the returning officer, pp. 24—43, *infra*.

#### ART. 4.—Notice, Time, and Place of Election.

*The returning officer must in the case of a county election within two days after the day on which he receives the writ, and in the case of a borough election on the day on which he receives the writ or on the following day, give public notice, between the hours of 9 a.m. and 4 p.m., of the day<sup>22</sup> on which and the place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election shall send one of such notices by post, under cover, to the postmaster of the principal post office of each polling place in the county, endorsed with the words "Notice of election," and the same shall be forwarded free of charge; and the postmaster receiving the same must forthwith publish the same in the manner in which post-office notices are usually published.<sup>23</sup>*

<sup>20</sup> Corrupt Practices Act, 1883, s. 35 (1).

<sup>21</sup> Corrupt Practices Act, 1883, s. 35 (2).

<sup>22</sup> This day is described in the Ballot Act as the "day of election," although,

except when the election is uncontested, it is in reality not the day on which the election takes place, but the day appointed for the nomination of candidates: R. P. Act, 1918, s. 21 (1).

<sup>23</sup> Ballot Act, 1872, Sched. 1, r. 1.

*At a general election the day fixed by the returning officer for the election must in all cases be the eighth day after the date of His Majesty's Proclamation declaring the calling of the Parliament.*<sup>24</sup>

*At a bye-election the day of election must be fixed by the returning officer as follows; that is to say, in the case of an election for a county or a district borough not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in the case of an election for any borough other than a district borough not later than the seventh day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election.*<sup>25</sup>

*Official telegraphic intimation of the writ having been issued for an election may be given in such cases and by such persons as may be directed by His Majesty in Council, and any steps for holding an election which may be taken on or after receipt of the writ may be taken on or after receipt of an official telegraphic intimation of the writ having been issued.*<sup>26</sup>

*The time appointed for the election*<sup>26\*</sup> *shall be such two hours between the hours of 10 a.m. and 3 p.m. as may be appointed by the returning officer, and the returning officer must attend during those two hours and for one hour after.*<sup>27</sup>

*The place of election*<sup>26\*</sup> *must be fixed for each constituency by the returning officer, and shall be, (a) if the constituency is a parliamentary borough or a division of a parliamentary borough, some place within the borough, and (b) if the constituency is a parliamentary county, or a division of a parliamentary county, some place within the county or within a parliamentary borough adjoining the county.*<sup>28</sup> *In Scotland the place of election*<sup>26\*</sup> *is a convenient room situated in such place as the Secretary for Scotland may by order from time to time determine.*<sup>29</sup>

*At University elections the nomination takes place on such day*<sup>30</sup> *and at such time and place as may be fixed by the returning officer, being not less than four days and not more than twelve days (in Scotland, eight days) after the receipt of the writ, and the returning officer must give public notice of the day, time and place so fixed*

<sup>24</sup> R. P. Act, 1918, s. 21 (1), and Second Sch., Pt. I.

<sup>25</sup> Ballot Act, 1872, Sched. 1, r. 2, as amended by R. P. (No. 2) Act, 1920, s. 3. The days of nomination and polling for Orkney and Shetland and for the Wick district of burghs are still governed by the Scotch Reform Act, 1832, 2 & 3 Will. 4, c. 65, ss. 30, 31; 35 & 36 Vict. c. 33, Sched. 1, r. 61.

<sup>26</sup> R. P. Act, 1918, s. 21 (2).

<sup>26\*</sup> As to the meaning in which "election" is here used, see footnote (22) on preceding page.

<sup>27</sup> Ballot Act, 1872, Sched. 1, r. 4.

<sup>28</sup> R. P. Act, 1918, s. 32.

<sup>29</sup> R. P. Act, s. 43 (16).

<sup>30</sup> This day corresponds to the "day of election" in the sense used above. See footnote (22) on preceding page.



*within two days (in Scotland, three days) after he receives the writ.*<sup>1</sup>

**ART. 5.—Nomination of Candidates.**

*A candidate for election to serve in Parliament for a county or borough must be nominated in writing.*<sup>2</sup> *The writing must be subscribed by two registered electors of such county or borough as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and must be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder.*<sup>2</sup>

*If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer must forthwith declare the candidates who may stand nominated to be elected, and return their names to the Clerk of the Crown in Chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer must adjourn the election and must take a poll.*<sup>2</sup>

*If the election is contested the returning officer must, as soon as practicable after adjourning the election, give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers, and of the names of the persons who subscribe the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and, in the case of an election for a county, deliver to the postmaster of the principal post office of the town in which is situate the place of election a paper, signed by himself, containing the names of the candidates nominated, and stating the day on which the poll is to be taken, and the postmaster must forward the information contained in such paper by telegraph, free of charge, to the several postal telegraph offices situate in the county for which the election is to be held, and such information must be published forthwith at each such office in the manner in which post office notices are usually published.*<sup>3</sup>

*At University elections the candidate must be nominated in writing by two electors as proposer and seconder, and by eight other electors as assenting to the nomination, and his nomination must be delivered to the returning officer by some elector. If at the expiration of the time fixed for nomination, no more candidates are nominated than there are vacancies to be filled up, the returning*

<sup>1</sup> R. P. Act, s. 36 (1), and Fifth Sch., Pt. I., cl. 3, and Pt. II., cl. 4.

<sup>2</sup> Ballot Act, 1872, s. 1.

<sup>3</sup> Ballot Act, 1872, Sched. 1, r. 9.

*officer shall declare the candidates who stand nominated to be elected, and certify the result of the election accordingly.*<sup>4</sup>

NOTE 1.—*Must be nominated in writing.* Each candidate must be nominated by a separate nomination paper, but the same electors or any of them may subscribe as many nomination papers as there are vacancies to be filled, but no more.<sup>5</sup>

The nomination paper must be fully filled in before it is subscribed by anyone.<sup>6</sup>

Where there were four vacancies to be filled, and an elector subscribed four nomination papers, which were duly delivered to the returning officer, and then a fifth, which was also duly delivered to him, the Court held that the first four nomination papers were valid, but that the fifth was not.<sup>7</sup>

Each candidate must be described in the nomination paper in such manner as in the opinion of the returning officer is calculated sufficiently to identify such candidate; the description must include his names, his abode, and his rank, profession, or calling, and his surname must come first in the list of his names.<sup>8</sup> No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule, shall be allowed or deemed valid, unless such objection is made by the returning officer, or by some other person, at or immediately after the time of the delivery of the nomination paper.<sup>9</sup>

The returning officer must supply a form of nomination paper to any registered elector requiring the same during such two hours as the returning officer may fix, between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of the election was given and the day of election, and during the time appointed for the election; but provided that the nomination paper is in the form prescribed by the Ballot Act, 1872, it need not be a nomination paper supplied by the returning officer.<sup>10</sup>

The nomination papers must be delivered to the returning officer, at the place of election during the time appointed for the election; and the candidate nominated by each nomination paper, and his proposer and seconder, and one other person selected by the candi-

<sup>4</sup> R. P. Act, 1918, s. 36 (1), and Fifth Sch., Pt. I., cl. 4, 5, and Pt. II., cl. 5, 6.

<sup>5</sup> Ballot Act, 1872, Sched. 1, r. 5.

<sup>6</sup> *Hermon v. Park* (1881), 7 Q. B. D. 369; *Cox v. Davies*, [1898] 2 Q. B. 202.

<sup>7</sup> *Burgoyne v. Collins* (1882), 8 Q. B. D. 450.

<sup>8</sup> Ballot Act, 1872, Sched. 1, r. 6.

There have been numerous decisions on the meaning of words similar to but not exactly the same as these in other Acts; see *Bowden v. Besley* (1888), 21 Q. B. D. 309; *Gledhill v. Crowther* (1889), 23 Q. B. D. 136; *Marton v. Gorrill*, *ibid.* 139, and cases there cited.

<sup>9</sup> Ballot Act, 1872, Sched. 1, r. 6.

<sup>10</sup> *Ibid.* r. 7.



date, and no person other than aforesaid shall, except for the purpose of assisting the returning officer, be entitled to attend the proceedings during the time appointed for the election.<sup>11</sup>

The returning officer must on the nomination paper being delivered to him, forthwith publish notice of the name of the person nominated as a candidate, and of the names of his proposer and seconder, by placarding or causing to be placarded the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room appointed for the election is situate.<sup>12</sup>

A person is not entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in the manner above described, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election is deemed to have been nominated in manner above described, unless objection be made to his nomination paper by the returning officer, or some other person, before the expiration of the time appointed for the election or within one hour afterwards.<sup>13</sup>

The returning officer decides on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but, if allowing the same, is subject to reversal on petition questioning the election or return.<sup>14</sup>

The returning officer's duty in this matter is limited to objections made to the nomination paper; thus, he has no jurisdiction to entertain an objection that the nomination paper has not been delivered in time,<sup>15</sup> and he has no power to deal with an objection to the qualification of the candidate.<sup>16</sup> But if a nomination paper appears on the face of it to be an abuse of the right of nomination, e.g., if it purports to nominate a deceased sovereign, the returning officer should reject it.<sup>17</sup>

When the returning officer has considered the objection to the nomination paper, and decided that such objection is invalid, the candidate is duly nominated, though he be disqualified and may be unseated on petition.<sup>18</sup>

“ ‘Nominated’ means duly nominated, and none but duly nominated candidate should be allowed to go to the poll.”<sup>19</sup>

If the name of a candidate who has withdrawn after nomination is printed in the ballot papers, and votes are consequently wasted, the election would be void.<sup>20</sup>

<sup>11</sup> Ballot Act, 1872, Sched. 1, r. 8.

<sup>12</sup> *Ibid.* r. 11.

<sup>13</sup> *Ibid.* r. 12.

<sup>14</sup> *Ibid.* r. 13.

<sup>15</sup> *Howes v. Turner* (1876), 1 C. P. D. 671; cf. *Monks v. Jackson*, *ibid.* 683.

<sup>16</sup> *Pritchard v. Mayor of Bangor* (1888), 13 A. C. 251, 257 (H. L.).

<sup>17</sup> *Harford v. Linskey*, [1899] 1 Q. B. 852, at p. 862.

<sup>18</sup> *Pritchard v. Mayor of Bangor* (1888), 13 A. C. 241 (H. L.).

<sup>19</sup> *Per* Archibald, J., in *Monks v. Jackson* (1876), 1 C. P. D. at 690.

<sup>20</sup> *Wilson v. Ingham* (1895), 64 L. J. Q. B. 775; 72 L. T. 796.

On the other hand, provided that the nomination paper is in the form required by the Ballot Act, 1872, the returning officer is bound to accept and act upon it. Thus, in *Mayo*<sup>21</sup> the returning officer refused to accept or act upon the nomination of the petitioner on the ground that he had not appointed an expense agent and given due notice thereof to the returning officer on or before the day of nomination. The election was held void, Morris, J., observing<sup>22</sup> that the objections raised had just as much to do with the case "as if the petitioner wore a white hat or had fur on his coat." "A party is put in nomination; the sheriff [returning officer] has the fullest power under the Act of Parliament of investigating his nomination paper, and seeing that he was properly nominated and seconded, and there his control ends; he has only to go on with the election."<sup>23</sup>

NOTE 2.—*Must be delivered to the returning officer by the candidate himself or his proposer or seconder.* In *Monks v. Jackson*<sup>24</sup> a nomination paper delivered by a person who was not the candidate, nor his proposer, nor seconder, was held to be void.

#### ART. 6.—Deposit by Candidates.

A candidate, or someone on his behalf, must deposit or cause to be deposited with the returning officer, during the time appointed for the election,<sup>25</sup> the sum of £150, and if he fails to do so, he is deemed to be withdrawn within the provisions of the Ballot Act, 1872.<sup>26</sup>

The deposit may be made by the deposit of any legal tender or, with the consent of the returning officer, in any other manner.<sup>27</sup>

If after the deposit is made the candidate is withdrawn in pursuance of the provisions of the Ballot Act, 1872,<sup>28</sup> the deposit must be returned to the person by whom it was made.<sup>29</sup>

If the candidate dies after the deposit is made, and before the poll is commenced, the deposit, if made by him, must be returned to his legal personal representative, or, if not made by him, to the person by whom the deposit was made.<sup>30</sup>

If a candidate who has made the required deposit is not elected, and the number of votes polled by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled, or in the case of a constituency returning more than two members, one-eighth of the number of votes polled divided by the number of members to be elected, the amount

<sup>21</sup> (1874), 2 O. & H. 191.

<sup>22</sup> (1874), 2 O. & H. 194.

<sup>23</sup> *Per* Morris, J., in *Mayo* (1874), 2 O. & H. 194.

<sup>24</sup> (1876), 1 C. P. D. 688.

<sup>25</sup> See Art. 4, p. 15, *supra*.

<sup>26</sup> R. P. Act, 1918, s. 26 (1). As to

withdrawal of candidate, see Art. 7, *infra*.

<sup>27</sup> R. P. Act, 1918, s. 26 (2).

<sup>28</sup> See Art. 7, *infra*.

<sup>29</sup> R. P. Act, 1918, s. 26 (3).

<sup>30</sup> *Ibid*.



*deposited shall be forfeited to His Majesty: but in any other case that amount shall be returned to the candidate, where the candidate is elected, as soon as he has taken the oath as a member, and, where the candidate is not elected, as soon as practicable after the result of the election is declared:*

*Provided that where a candidate is nominated at a general election in more than one constituency he shall in no case recover his deposit more than once, and in such case the deposits shall be forfeited to His Majesty except such one as the Treasury direct to be returned to the candidate.*

*For the purpose of this provision the number of votes polled shall be deemed to be the number of ballot papers (other than spoilt ballot papers) counted; and where the election is held under the system of the transferable vote the number of votes polled by a candidate shall be the number of votes polled by him as first preferences.<sup>1</sup>*

#### ART. 7.—**Withdrawal or Death of Candidate pending Election.**

*A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer; but the proposer of a candidate nominated in his absence out of the United Kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate.<sup>2</sup>*

*If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated shall die before the poll has commenced, the returning officer must, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.<sup>2</sup>*

*If one of the candidates nominated shall die after the poll has been opened, the returning officer should proceed as if the candidate were alive.<sup>3</sup>*

<sup>1</sup> R. P. Act, 1918, s. 27. Elections under the system of the transferable vote are only held for university constituencies.

<sup>2</sup> Ballot Act, 1872, s. 1.

<sup>3</sup> There is no statutory provision dealing with this point; it is submitted,

however, that the above statement correctly represents the duty of the returning officer in such circumstances. The returning officer should proceed in the manner indicated in Article 8, Note 6, p. 43, *infra*.

At a University election a candidate may be withdrawn in the manner provided by regulations<sup>4</sup> made under the Representation of the People Act, 1918, and if, owing to the withdrawal of a candidate after nomination a poll becomes unnecessary, the returning officer must countermand the poll and declare any candidate elected whose nomination remains standing.<sup>5</sup>

At a University election, if one of the candidates dies after he has been nominated and before the commencement of the poll, the returning officer must countermand the poll and other proceedings for the election and commence the same again as if the writ had been received by him on the day on which he is satisfied of the fact that the death took place.<sup>6</sup>

No fresh nomination is required in the case of a candidate who stood nominated at the time the poll was countermanded.<sup>7</sup>

NOTE 1.—If any candidate nominated during the time appointed for the election is withdrawn, the returning officer must, except at University elections, give public notice of the name of such candidate, and the names of the persons who subscribed the nomination paper of such candidate, as well as of the candidates who stood nominated or were elected.<sup>8</sup>

NOTE 2.—If . . . one of the candidates nominated shall die before the poll has commenced, the returning officer must . . . countermand the poll. If in these circumstances the returning officer does not countermand the poll, a *mandamus* will lie to compel him to do so.<sup>9</sup>

#### ART. 8.—The Poll.

At a general election all polls must be held on one day, being the ninth day after the "day fixed for the election,"<sup>10</sup> i.e., the day on which nominations are received.<sup>11</sup>

At a bye-election the poll must take place on such day as the returning officer may appoint not being less than six or more than eight clear days after the "day fixed for the election."<sup>12</sup>

The poll must commence at 8 a.m., and be kept open till 8 p.m. of the same day, and no longer.<sup>13</sup>

<sup>4</sup> University Elections (Miscellaneous Provisions) Order, 1918 (S. R. O. 1918, No. 1349), r. 3. This rule is set out in the Author's "Representation of the People Acts, 1918 to 1921," at p. 431.

<sup>5</sup> R. P. Act, 1918, s. 36 (1), and Fifth Sch., Pt. I., cl. 7, and Pt. II., cl. 8.

<sup>6</sup> R. P. Act, 1918, s. 36 (1), and Fifth Sch., Pt. I., cl. 8, and Pt. II., cl. 9.

<sup>7</sup> *Ibid.*

<sup>8</sup> Ballot Act, 1872, Sched. 1, r. 10.

<sup>9</sup> *Westacott v. Stewart*, [1898] 1 Q. B. 552.

<sup>10</sup> R. P. Act, 1918, s. 21 (1), and Second Sch., Pt. I.

<sup>11</sup> See footnote (22) on p. 15, *supra*.

<sup>12</sup> Ballot Act, 1872, Sched. 1, r. 14, as modified by R. P. Act, 1918, s. 21 (1), and R. P. (No. 2) Act, 1920 s. 3.

<sup>13</sup> 48 Vict. c. 10, s. 1.



*The votes must be given by ballot. The ballot of each voter consists of a paper called a ballot paper, showing the names and description of the candidates. Each ballot paper must have a number printed on the back, and must have attached a counterfoil with the same number printed on the face. At the time of voting the ballot paper must be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters must be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, must place it in a closed box, called a ballot box, in the presence of the officer presiding at the polling station, called the presiding officer, after having shown to him the official mark at the back.*<sup>14</sup>

*It is the duty of every returning officer to provide such nomination papers, polling stations, ballot boxes, ballot papers, instruments for stamping thereon the official marks, copies of the register of voters, materials for voters to mark the ballot papers, and forms of directions for the guidance of the voter in voting, and to appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by the Ballot Act, 1872.*<sup>15</sup>

*After the close of the poll the ballot boxes must be sealed up, so as to prevent the introduction of additional ballot papers, and must be taken charge of by the returning officer, and that officer must, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate.*<sup>14</sup>

*Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.*<sup>16</sup> *The decision of the returning officer as to any question arising in respect of any ballot paper is final, subject to reversal on petition questioning the election or return.*<sup>16</sup>

*Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.*<sup>17</sup>

*After ascertaining the result of the poll as aforesaid, the returning*

<sup>14</sup> Ballot Act, 1872, s. 2.

<sup>15</sup> Ibid. s. 8; Sched. 1, r. 20.

<sup>16</sup> Ballot Act, 1872, s. 2.

<sup>17</sup> Ibid.

officer must forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given.<sup>17</sup>

The above provisions do not apply to University elections.<sup>18</sup> At contested elections for the university constituencies where there are two or more members to be elected, any election of the full number of members must be according to the principle of proportional representation, each elector having one transferable vote as defined by the Representation of the People Act, 1918.<sup>19</sup>

The provisions relating to the poll and the counting of votes at University elections are set out in the Fifth Schedule to that Act.<sup>20</sup>

N.B.—Two new methods of voting were introduced by the Representation of the People Act, 1918,<sup>21</sup> for the purpose of affording an opportunity of voting to “absent voters,” i.e., persons who, by reason of the nature of their occupation, service or employment, are likely to be debarred from voting in the ordinary manner.

These two methods are:—

1. Voting by post.
2. Voting by proxy.

The ordinary law governing the taking of the poll applies to the above new methods of voting<sup>22</sup> subject to the modifications which are necessary to adapt the existing law to the new methods. These modifications are prescribed by Order in Council made under the Representation of the People Act, 1918.<sup>23</sup>

NOTE 1.—*Polling station.* At every polling place the returning officer must provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and must distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there must be at least one polling station at each contributory place of such borough.<sup>24</sup>

The returning officer may use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or persons having control over the same on account of its being used for the purpose of taking the poll.<sup>25</sup>

<sup>17</sup> Ballot Act, 1872, s. 2.

<sup>18</sup> *Ibid.* s. 31.

<sup>19</sup> R. P. Act, 1918, ss. 20 (1) and 41 (6). See also University Elections (Single Transferable Vote) Regulations, 1918 (S. R. O. 1918, No. 1,348), prescribing method of voting, counting of votes, etc., which are set out in the Author's "Representation of the People Acts, 1918 to 1921," at pp. 411—430.

<sup>20</sup> R. P. Act, 1918, s. 36 (1), and Fifth Sch., Pt. I., cl. 9—24; Pt. II.,

cl. 10—33 (Scottish Universities).

<sup>21</sup> Sect. 28, as amended by R. P. (No. 2) Act, 1920, s. 2 (1).

<sup>22</sup> R. P. Act, 1918, s. 23 (2) (4), Third Sch., cl. 9.

<sup>23</sup> See R. P. Order, Parts III. and IV., which are set out in the Author's "Representation of the People Acts, 1918 to 1921," at pp. 367—372.

<sup>24</sup> Ballot Act, 1872, Sched. 1, r. 15.

<sup>25</sup> Ballot Act, 1872, s. 6.



No poll at any election is to be taken, except by the consent of all the candidates in writing, in any inn or other place licensed for the sale of wine, beer, or spirits, or any place connected therewith.<sup>26</sup>

Each polling station must be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every 150 electors entitled to vote at such polling station.<sup>27</sup>

In *Drogheda*<sup>28</sup> it was contended that the election was void by reason of the arrangement of the polling stations. The compartment was a room separated from that in which the presiding officer sat by a passage to which the public had access. The Court was equally divided as to whether this was such a breach of the Ballot Act as to render the election void.

A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.<sup>29</sup>

No person is to be admitted to vote at any polling station except the one allotted to him.<sup>30</sup> This rule, however, does not apply to an elector who is employed by the returning officer for any purpose in connection with an election, and the circumstances of whose employment are, in the opinion of the returning officer, such as to prevent him from voting at the polling station at which he would otherwise be entitled to vote. In such a case the returning officer may authorise the elector by a certificate given in the prescribed form to vote at any other polling station in the constituency, and that polling station is to be deemed to be the polling station allotted to the elector.<sup>1</sup>

The returning officer must give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.<sup>2</sup>

By sect. 37 of the Representation of People Act, 1867, it is provided that at contested elections for counties or boroughs, the returning officer *shall*, when practicable (unless some place belonging to the county or borough is provided for the purpose), hire a building or room instead of erecting a booth.

**NOTE 2.**—*It is the duty of every returning officer to provide such nomination papers, polling stations, ballot boxes, ballot papers, instruments for stamping thereon the official marks, copies of the register of voters, materials for voters to mark the ballot papers, and forms of directions for the guidance of the voter in voting, and*

<sup>26</sup> 16 & 17 Vict. c. 68, s. 6; 16 & 17 Vict. c. 28, s. 4 (Scotland).

<sup>27</sup> Ballot Act, 1872, Sched. 1, r. 16.

<sup>28</sup> (1874), 2 O. & H. 201.

<sup>29</sup> Ballot Act, 1872, Sched. 1, r. 17.

<sup>30</sup> *Ibid.* r. 18.

<sup>1</sup> R. P. Act, 1918, s. 24.

<sup>2</sup> Ballot Act, 1872, Sched. 1, r. 19.

*to appoint and pay such officers and do such other acts and things as may be necessary for effectually conducting an election in manner provided by the Ballot Act, 1872.*<sup>3</sup>

As to *nomination papers* and *polling stations*, see respectively pp. 18—19 and 24—25, *supra*.

As regards the *ballot boxes*, they must be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked.<sup>4</sup>

Where a parliamentary and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations, and compartments provided for such parliamentary or municipal election, may be used in any municipal or parliamentary election in such borough free of charge, and any damage, other than reasonable wear and tear, caused to the same shall be part of the expenses of the election at which they are so used<sup>5</sup>; and in any case to which this provision is applicable it is the duty of the returning officer, so far as is practicable, to make use of the ballot boxes, fittings, and compartments, provided for municipal or school board elections, and the Court upon taxation of his accounts shall have regard to the provisions of this section.<sup>6</sup>

Every ballot paper must contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it must be in the form set forth in the Second Schedule to the Ballot Act, 1872, or as near thereto as circumstances admit, and must be capable of being folded up.<sup>7</sup>

The names of those candidates only who have been duly nominated and not withdrawn can be printed on the ballot papers.<sup>8</sup> Ballot papers of a different colour must be provided for "tendered votes"<sup>9</sup>. Every ballot paper must have a counterfoil, and must be numbered on the back with a number corresponding to that on the face of the counterfoil.<sup>10</sup> As the object of the numbering is to make it possible to ascertain in the event of a scrutiny how votes have been given, all the ballot papers in any one election, at whatever station they are used, ought to be numbered in a continuous series. The ballot papers and counterfoils should be bound up in books like ordinary cheque or receipt books.

As regards *stamping instruments*, the returning officer must provide each polling station with the materials (usually a pencil)

<sup>3</sup> Ballot Act, 1872, s. 8; Sched. 1, c. 41, s. 4 (Scotland).  
r. 20.

<sup>4</sup> *Ibid.* Sched. 1, r. 23.

<sup>5</sup> *Ibid.* s. 14.

<sup>6</sup> Returning Officers Act, 1875, s. 6 (England and Ireland); 41 & 42 Vict.

<sup>7</sup> Ballot Act, 1872, Sched. 1, r. 22.

<sup>8</sup> *Ibid.* r. 12.

<sup>9</sup> *Ibid.* r. 27.

<sup>10</sup> *Ibid.* s. 2.



with which voters may mark the ballot papers, and with instruments for stamping thereon the official mark, which must be kept secret, and an interval of not less than seven years must be allowed to intervene between the use of the same official mark at elections for the same county and borough.<sup>12</sup> The mark may be stamped or perforated<sup>13</sup>; as it is to be visible on both sides of the paper, a perforating or embossed stamp should be used.

As regards the *register of voters*, the returning officer must provide each polling station with a copy of the part of the register which contains the names of the electors entitled to vote at that station.<sup>15</sup>

As regards the *directions for the guidance of the voter*, the returning officer must have these printed in conspicuous characters, and placarded outside every polling station, and in every compartment of every polling station.<sup>16</sup> They must be as follows<sup>16</sup>:—

“The voter may vote for            candidate .

“The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X.

“The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

“If the voter inadvertently spoils a ballot paper he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

“If the voter votes for more than            candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

“If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

“Note.—These directions shall be illustrated by examples of the ballot paper.”

*The returning officer is to appoint and pay such officers as may be necessary for effectually conducting the election.*

These officers are a presiding officer to preside at each polling station, poll clerks, and, in addition to any clerks, competent

<sup>12</sup> Ballot Act, 1872, Sched. 1, r. 20.

<sup>13</sup> *Ibid.* r. 24.

<sup>15</sup> Ballot Act, 1872, Sched. 1, r. 20.

<sup>16</sup> Ballot Act, 1872, Sched. 2; *ibid.* Sched. 1, r. 19.

persons to assist him in counting the votes,<sup>17</sup> if he thinks such assistance will be needed, and constables or peace officers; but no person can be appointed by him for the purpose of an election who has been employed by any other person in or about the election.<sup>18</sup>

The returning officer may, if he think fit, preside at any polling station.<sup>19</sup>

*Presiding officer.*—The presiding officer must preside at the polling station to which he is appointed. He must keep order at his station, regulate the number of voters to be admitted at a time, and exclude all other persons except the candidates<sup>20</sup> and their agents,<sup>21</sup> the clerks, and the constables on duty.<sup>21</sup>

The presiding officer at any polling station, just before the commencement of the poll, must show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and must then lock it up and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and must place it in his view for the receipt of ballot papers, and keep it so locked and sealed.<sup>22</sup>

Immediately before a ballot paper is delivered to an elector the presiding officer must mark it or cause it to be marked on both sides with the official mark, either stamped or perforated. The number, name, and description of the elector as stated in the copy of the register must then be called out, and the number of such elector marked on the counterfoil, and a mark must be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.<sup>23</sup>

The voter, on receiving the ballot paper, must forthwith proceed into one of the compartments in the polling station, and there mark his paper and fold it up so as to conceal his vote, and must then put his ballot paper, so folded up, into the ballot box; he must vote without undue delay, and must quit the polling station as soon as he has put his ballot paper into the ballot box.<sup>24</sup>

It is the duty of the presiding officer to see that the ballot paper bears the official mark before the voter puts it into the ballot box,<sup>25</sup> and where a candidate lost an election in consequence of ballot papers not having the official mark, the presiding officer was held liable to such candidate for the omission.<sup>26</sup>

A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may,

<sup>17</sup> Ballot Act, 1872, Sched. 1, r. 48.

<sup>18</sup> *Ibid.* r. 49.

<sup>19</sup> *Ibid.* r. 47.

<sup>20</sup> *Clementson v. Mason* (1875),  
<sup>32</sup> L. T. N. S. 325.

<sup>21</sup> Ballot Act, 1872, Sched. 1, r. 21.

<sup>22</sup> *Ibid.* Sched. 1, r. 23.

<sup>23</sup> *Ibid.* r. 24.

<sup>24</sup> *Ibid.* r. 25.

<sup>25</sup> *Ibid.* s. 2.

<sup>26</sup> *Pickering v. James* (1873), L. R.  
8 C. P. 489.



on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in the Ballot Act, 1872, called "a spoilt ballot paper"), and the spoilt ballot paper shall be immediately cancelled.<sup>27</sup>

If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter; but the ballot paper (called "a tendered ballot paper") must be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, must be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and must not be counted by the returning officer. And the name of the voter and his number on the register must be entered on a list called "the tendered votes list."<sup>28</sup>

The presiding officer, on the application—(1) of any voter who is incapacitated by blindness or other physical cause from voting in the prescribed manner; or (2) (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in the prescribed manner; or (3) of any voter who makes the prescribed declaration that he is unable to read,<sup>29</sup> must, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, called "the list of votes marked by the presiding officer." Such declaration must be made by the voter at the time of polling, before the presiding officer, who must attest it in the prescribed form, and no fee, stamp, or other payment shall be charged in respect of such declaration, which must be given to the presiding officer at the time of voting.<sup>30</sup>

If at the time any person tenders his vote or applies for a ballot paper, or after he has voted and before he leaves the polling station, any agent appointed for the purpose of detecting personation shall declare to the returning officer or to the presiding officer that he

<sup>27</sup> Ballot Act, 1872, Sched. 1, r. 28.

Ballot Act, 1872, Second Schedule.

<sup>28</sup> Ballot Act, 1872, Sched. 1.

<sup>30</sup> Ballot Act, 1872, Sched. 1, r. 26.

<sup>29</sup> For form of this declaration, see

verily believes, and undertakes to prove, that the person so voting is not in fact the person in whose name he applies for a ballot paper, or to the like effect, the returning or presiding officer must, immediately after such person has voted, by word of mouth, order any constable or other peace officer to take him into custody; and such order is a sufficient warrant to the constable or peace officer for so doing.<sup>1</sup>

Every such constable or peace officer must take the person so in his custody, at the earliest convenient time, before two justices acting for the place within which the said person has voted. If two justices cannot be found within three hours after the close of the poll, the person charged may request the constable or police officer to take him before one justice, who must liberate him on entering into a recognisance with one sufficient surety to appear before two justices; and if one justice cannot be found within four hours after the close of the poll, the person charged must forthwith be discharged from custody. Any two justices may, however, on the next or some subsequent day, inquire into the charge, and, if necessary, issue their warrant for the apprehension of the person charged.<sup>2</sup>

If the justices are satisfied on the oath of not less than two credible witnesses that the person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person, they shall commit him for trial.<sup>3</sup>

Where the justices are satisfied that a charge has been made without reasonable or probable cause, or if the agent making the charge does not appear to support it, they may make an order under their hands on the agent to pay the person falsely charged, if he consents to accept it, any sum not exceeding £10, nor less than £5, by way of damages and costs. If this sum be not paid within twenty-four hours after the making of the order, then it may be levied by distress and sale of the goods, &c., of the agent, or if he has not sufficient goods, &c., on which to levy, the same may be levied on the goods and chattels of the candidate who appointed the agent. If the money is not paid or levied, the agent or candidate may be sued for the same in the High Court. If the person agrees to accept the sum aforesaid, and it is actually paid or tendered, then the agent and candidate are released from all actions or other proceedings, civil or criminal.<sup>4</sup>

The statute 13 & 14 Vict. c. 69, ss. 90, 96, is substantially a re-enactment as regards elections in Ireland of the provisions of the Registration Act, 1843, as to the personation oath and questions, and as to the prosecution and punishment of the offence of personation.

<sup>1</sup> Parliamentary Registration Act, 1843, s. 87.  
1843, s. 86; Ballot Act, 1872, s. 15.

<sup>3</sup> *Ibid.* s. 88.

<sup>2</sup> Parliamentary Registration Act,

<sup>4</sup> *Ibid.* s. 89.



The provisions of the Registration Acts (6 & 7 Vict. c. 18, and 13 & 14 Vict. c. 69) in England and Ireland respectively apply to personation under the Ballot Act, 1872, in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person, as mentioned in the said Acts.<sup>5</sup>

It is the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, must be allowed by the Court in the same manner in which Courts are empowered to allow the same in cases of felony.<sup>6</sup>

If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day. Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.<sup>7</sup>

For the purpose of the adjournment of the poll in case of riot or interruption and of every other enactment relating to the poll, the presiding officer has the same powers as a deputy returning officer.<sup>8</sup>

The presiding officer of each station, as soon as practicable after the close of the poll, must in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals:—

- I. Each ballot box in use at his station, unopened but with the key attached; and
- II. The unused and spoilt ballot papers placed together; and
- III. The tendered ballot papers; and
- IV. The marked copies of the register of voters, and the counter-foils of the ballot papers; and
- V. The tendered votes list, and the list of votes marked by the

<sup>5</sup> Ballot Act, 1872, s. 24.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.* s. 9. The powers conferred by this section must not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling

station from having an opportunity of voting at such station. *ibid.*

<sup>8</sup> *Ibid.* s. 10. See also 2 Will. 4. c. 45, s. 70; and 5 & 6 Will. 4. c. 36. s. 8.

presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and must deliver such packets to the returning officer.<sup>9</sup>

The packets must be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is known as the ballot paper account.<sup>10</sup>

Presiding officers at a county election are allowed a payment of three guineas a day and at a borough election three pounds a day.<sup>11</sup>

*Poll clerk.*—A poll clerk must make the same statutory declaration of secrecy as a presiding officer.<sup>12</sup> He has the power of asking questions and administering the oath authorised by law to be asked of and administered to voters,<sup>13</sup> and he can do any act which the presiding officer is required or authorised by the Ballot Act to do at a polling station except ordering the arrest, exclusion or ejection of any person from the polling station.<sup>14</sup>

One poll clerk may be employed for every 500 voters, and the payment is 25s. a day both at a county election and at a borough election.<sup>15</sup>

No returning officer for any county or borough, nor his deputy, nor any partner or clerk of either of them,<sup>16</sup> nor any presiding officer, poll clerk, or check clerk appointed by such returning officer,<sup>17</sup> may act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them, or any presiding officer, poll clerk, or check clerk, shall so act, he shall be guilty of a misdemeanour.<sup>18</sup>

In addition to the duties of the returning officer mentioned on pages 13—15, *supra*, it is his duty before the poll, as has been pointed out,<sup>19</sup> to give due notice of the election, receive nominations and withdrawals, decide on the validity of objections to nomination papers, and give notice of the persons nominated and of the poll. After the close of the poll he must also perform certain further duties which are specified in the above Article and Note 6, page 43, *infra*, and must give due notice of the time

<sup>9</sup> Ballot Act, 1872, Sched. 1, r. 29.

<sup>10</sup> *Ibid.* r. 30.

<sup>11</sup> Treasury Order dated Oct. 23, 1922 (S. R. O. 1922, No. 1151), made under s. 29 of R. P. Act, 1918.

<sup>12</sup> Ballot Act, 1872, Sched. 1, r. 54.

<sup>13</sup> *Ibid.* s. 10.

<sup>14</sup> Ballot Act, 1872, Sched. 1, r. 50.

<sup>15</sup> Treasury Order dated Oct. 23, 1922 (S. R. O. 1922, No. 1151), made under s. 29 of R. P. Act, 1918.

<sup>16</sup> Representation of People Act, 1867, s. 50.

<sup>17</sup> Ballot Act, 1872 s. 11.

<sup>18</sup> See Article 4, p. 15, and Article 5, p. 17, *supra*.



and place of counting of the votes to the agents of the respective candidates.

NOTE 3.—*The returning officer must ascertain the result of the poll by counting the votes given to each candidate.* The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.<sup>17</sup> A total sum of £14 may be paid to such persons if the number of registered electors in the constituency does not exceed 20,000; and an additional 15s. may be paid for each additional 2,000 electors or fraction thereof.<sup>18</sup>

The candidates themselves may respectively appoint agents to attend the counting of the votes.<sup>19</sup> Such agents must not, however, be paid.

The returning officer must make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and must give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.<sup>20</sup>

The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.<sup>21</sup>

Before the returning officer proceeds to count the votes, he must, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, must count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, must keep the ballot papers with their face upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.<sup>22</sup>

The returning officer must, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer must place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and must otherwise take proper precautions for the security of such papers and documents.<sup>23</sup>

The name and address of every agent of a candidate appointed

<sup>17</sup> Ballot Act, 1872, s. 11, Sched. 1, r. 48.

<sup>18</sup> Treasury Order dated Oct. 23, 1922 (S. R. O. 1922, No. 1151), made under s. 29 of R. P. Act, 1918.

<sup>19</sup> Ballot Act, 1872, Sched. 1, r. 31.

<sup>20</sup> *Ibid.* r. 32.

<sup>21</sup> *Ibid.* r. 33.

<sup>22</sup> *Ibid.* r. 34.

<sup>23</sup> *Ibid.* r. 35.

to attend the counting of the votes must be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.<sup>24</sup>

If any such agent dies or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and must forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.<sup>25</sup>

NOTE 4.—*Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written or marked by which the voter can be identified, shall be void and not counted.* This provision is contained in sect. 2 of the Ballot Act, 1872, and by r. 36 of the 1st Schedule to the same Act it is the duty of the returning officer to endorse “rejected” on any ballot paper which he may reject as invalid, and to add to the endorsement “rejection objected to,” if an objection be in fact made by any agent to his decision.<sup>26</sup> Failure to make the endorsements will not, however, render the election invalid.<sup>27</sup> He must report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and must, on request, allow any agent of the candidates, before such report is sent, to copy it.<sup>28</sup>

“The questions here raised,” said Lord Neaves in *Wigtown*,<sup>29</sup> “are important and delicate on this account in particular, viz., that while a certain form of exercising the franchise is pointed out in the statute on the subject, some deviations from the strict letter of the directions therein contained may be so trifling as to be immaterial, while others may be more serious, and thus may be fatal. The merits of each vote, therefore, may turn on questions of degree, which it is always difficult to distinguish, as the one class may run almost imperceptibly into the other. This is the

<sup>24</sup> Ballot Act, 1872, Sched. 1, r. 52.

<sup>25</sup> *Ibid.* r. 53.

<sup>26</sup> *Ibid.* r. 36.

<sup>27</sup> *Woodward v. Sarsons* (1875), L. R. 10 C. P. 753.

<sup>28</sup> (1874), 2 O. & H. 220, 221.



old puzzle as to how many grains of corn make a heap, or at what stage a little thing grows into a big one.

"In this state of matters the important point is to look to the great objects and principles of the statute, and to take care that we do everything necessary to follow these out, and nothing that can defeat or endanger them.

"The great object in view, I take it, in the Ballot Act is the double result of facility in the exercise of the franchise and perfect secrecy as to the vote of individual voters. This double purpose is by the Act sought to be accomplished by not allowing a vote to be given *viva voce*, as it used to be, nor in writing (properly speaking), in either of which cases secrecy would be impossible, or would be imperilled, for by writing, though not setting forth the writer's name, yet through the *comparatio literarum* the writer might be discovered. Nor would it have done, perhaps, to leave the voter to put any mark he pleased to show the candidate for whom he voted. A mark has been pointed out and represented in the statutory directions, that of a cross, thus, X. It is, I think, a mark well devised for the purpose, easy of execution by men of the most moderate intelligence, and at the same time perfectly neutral in its character, so as to be practically incapable of betraying its authorship by its appearance. I think it is scarcely possible that a ballot paper strictly in terms of the statute should lead to the voter's identification, one man's cross being in general indistinguishable from another man's."

It is important to notice, as was pointed out in the considered judgment of the Court in the case of *Woodward v. Sarsons*,<sup>29</sup> that "the rules in the 1st Schedule of the Ballot Act and the forms in the 2nd Schedule are directory enactments, as distinguished from the absolute enactments in the sections in the body of the Act . . . the general rule is that an absolute enactment must be obeyed or fulfilled exactly, it is sufficient if a directory enactment be obeyed or fulfilled substantially.

"The second section enacts, as to what the voter shall do, that 'the voter, having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in an enclosed box.' This is all that is said in the body of the Act about what the voter shall do with the ballot paper. That which is absolute, therefore, is that the voter shall mark his paper secretly.<sup>30</sup> How he shall mark it is in the directory part of the statute."<sup>1</sup>

<sup>29</sup> (1875), L. R. 10 C. P. 746, set out in Appendix IV., p. 369. *infra*.

<sup>30</sup> If this provision is infringed, the vote will be void, and a similarly strict compliance with all the other requirements of sect. 2 is necessary. Thus a

vote will be void if the ballot paper has no official mark on it (*Wigtown* (1874). 2 O. & H. 215) or if it is filled up in such a way as to lead to the identification of the voter. See sect. 2 of the Ballot Act, 1872, and Sched. 2, which

“The result seems to be, as to writing or mark on the ballot paper, that if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote at all or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing or a mark by which the voter can be identified, then the ballot paper is void, and is not to be counted; or, to put the matter affirmatively, the paper must be marked so as to show that the voter intended to vote for someone, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted.

“If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled the ballot paper is void, and should not be counted; and if it is counted, it should be struck out on a scrutiny. The decision in each case is upon a point of fact, to be decided first by the returning officer, and afterwards by the election tribunal, on petition.”<sup>2</sup>

#### 1. *Want of official mark.*

“It is quite sufficient if there is such evidence of the official mark, whether it is perforated through the paper, whether the ink is caused to run through the paper so as to indicate the official mark, or whether the stamp is applied, but fails to make a perfect mark. In all such cases, if there be evidence that the presiding officer has intended to make, and has in fact made, what, fairly looked at, indicates that a recognisable official mark is upon the back of the ballot paper, votes marked on such papers ought to be held good votes in the absence of any other substantial objection.”

#### 2. *Voting for more candidates than entitled to.*

“If there be marks indicating that the voter has voted for too many candidates . . . then the ballot paper is void and is not to be counted.”<sup>3</sup>

“The paper must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for.”<sup>3</sup>

If it is so marked “the ballot paper is void and should not be

is made part of the Act by sect. 28;  
*Woodward v. Sarsons* (1875), L. R.  
10 C. P. 747.

<sup>1</sup> (1875), L. R. 10 C. P. 747.

<sup>2</sup> (1875), L. R. 10 C. P. 748.

<sup>3</sup> *Per Curiam* in *Woodward v. Sarsons* (1875), L. R. 10 C. P. 748.  
See also *Phillips v. Goff* (1886), 17  
Q. B. D. 814.



counted; and if it is counted, it should be struck off on a scrutiny." <sup>3</sup>

3. *Writing or mark by which the voter might be identified.*

"The fact that the marks are such as *might* lead to the identification of the voter is not sufficient to vitiate and render void the vote. . . The mark must be a mark by which the voter *can* (*not, might possibly*) be identified. Whether the mark is such is a matter of fact. . . . It is an insufficient objection that the marks referred to might possibly afford a clue to the identification of the voter." <sup>4</sup>

4. *Unmarked or void for uncertainty.*—The Courts appear to have placed a more rigid and technical interpretation on the language of the statute in the earlier than in the later cases. Thus in *Wigtown* <sup>5</sup> Lord Neaves said:—

"I think it essential to a good vote that the voter should make the cross thus pointed out, and that any mark materially different would be a deviation from what is prescribed, and a failure to fulfil the requirements of the statute. For anyone to put, instead of a cross, a circle or an oval, or any other geometrical or anomalous figure, would not be a compliance with the law, independently of the consideration that such a plain and wilful departure from what was intended would suggest strongly the suspicion that some sinister purpose was intended."

Again, in *Stepney Division* <sup>6</sup> counsel objected to a vote on the ground that the voter had put a circle instead of a cross and that by this it might be identified; he cited *Wigtown* <sup>7</sup>. Denman, J., said <sup>8</sup>:—

"The question here is whether the ballot paper is good in which the voter, instead of making a cross or a mark of the ordinary kind straight with his pen, deliberately makes a circle. If a man does that, he really must either do it with some sinister object, or it is so perversely and absurdly in deviation from the directions of the Ballot Act as to make it a case in which he ought really to be held to have thrown away his vote. If he does it with the sinister object of having his vote known, then he has forfeited the vote because he has violated the Ballot Act. If he does it purposely—and one cannot understand a man supposing that a cross is a circle—he has done it perversely, and done it in such a way as again to legitimately forfeit his vote. If he does it purposely, knowing that his vote may be thrown away, then he really has not indicated his intention to vote for the candidate against whose name he has placed the mark; so that in any case there is no good ground for holding that a circle is a cross within the meaning of the Ballot Act."

<sup>3</sup> *Ibid.*

<sup>4</sup> *Per* Hawkins, J., in *Cirencester* (1893), 4 O. & H. at p. 198.

<sup>5</sup> (1874), 2 O. & H. 220, 221.

<sup>6</sup> (1886), 4 O. & H. at pp. 37, 38.

<sup>7</sup> (1874), 2 O. & H. 215.

The vote was struck off.

The attention of the Court in this case does not appear to have been drawn to the important decision of the Court of Common Pleas in *Woodward v. Sarsons*,<sup>8</sup> but having regard to that case and to later decisions, it is respectfully submitted that the observations of Lord Neaves cited *supra* do not correctly state the law, and that the decision of the Court in *Stepney Division* must now be regarded as overruled.

In *Woodward v. Sarsons*<sup>9</sup> it was laid down that any mark which sufficiently indicates for whom the vote is given, so long as it is not such as to enable the voter to be identified, is good. (For facsimiles of ballot papers adjudicated upon in this case see Appendix IV., pp. 373—377, *infra*.) The following modes of marking were held good in the absence of evidence of connivance or pre-arrangement:—

(a) Two or three crosses instead of one.

(b) A straight vertical line instead of a cross.

(c) A straight stroke in addition to a cross.

(d) A letter P in addition to a cross.

(e) An oblique line instead of a cross.

(f) A star instead of a cross.

(g) A pencil line drawn through the name of one candidate and a cross opposite that of another.

(h) A cross placed on the left instead of the right-hand side of the candidate's name.

Some of these decisions are in conflict with some of the decisions of the majority of the judges in the Scotch Court of Session in *Wigtown*,<sup>10</sup> and in regard to this Lord Coleridge, C.J., in delivering the considered judgment of the Court in *Woodward v. Sarsons*<sup>9</sup> said:—

“We are aware that, in so applying the principles which we have deduced from the statute, we are acting apparently in opposition to some of the decisions in the *Wigtown* case<sup>11</sup>; but there may have been evidence in that case which does not exist in the present case, and which made many of the marks there marks of identification, which the mere presence of such marks here does not do. If this was not so, we respectfully differ from the strict view taken by the majority of the learned judges who decided that case, and adhere to the view of Lord Benholme given in that case.”

In 1876 a Select Committee of the House of Commons, appointed to inquire into the working of the Ballot Act, reported that in their opinion “no ballot paper should be rejected unless it appears clearly to the returning officer that the obligatory portion of the Act has not

<sup>8</sup> (1875), L. R. 10 C. P. 733.

<sup>9</sup> (1875), L. R. 10 C. P. 733.

<sup>10</sup> (1874), 2 O. & H. 215.

<sup>11</sup> (1874), 2 O. & H. 215, 227;  
1 Court of Sess. Cases, 4th Series, 925,  
231, *sub nom. Haswell v. Stewart*.



been complied with; and that the marking of the ballot paper in a manner not in accordance with the 'directions' should not cause its rejection, unless it appears to the returning officer that such departure from the directions has been for the purpose of identification, or would necessarily afford an opportunity for such identification being effected, or unless the returning officer is unable to determine for whom the voter intended to vote." The Committee further suggested that the Home Office should forward to every returning officer the case and judgment in *Woodward v. Sarsons*.<sup>12</sup>

In the later case of *Buckrose*,<sup>13</sup> where a vote was objected to on the ground that the ballot paper had been marked with a circle instead of a cross, the vote was allowed. Pollock, B., said:—

"I should have myself no doubt about this case but for the remarks of my brother Denman,<sup>14</sup> which one must take to have been entirely assented to by my brother Field, inasmuch as he did not dissent from them, but we have not before us the precise character of the circle in that case. It may have been something very accurate as a circle, and it may have indicated more education and mental power than is indicated by such figures as we find here, and therefore I cannot consider that that case is a binding authority upon us with reference to this particular ballot paper. So far as the Scotch authority goes it is not binding upon us. But now let us look at the plain intention which is indicated by the statute itself." After referring to the 2nd section of the Ballot Act, 1872, and the 2nd Schedule to that Act, the learned Baron continued: "It is in the schedule that for the first time you have an indication that it shall be by a cross. When you get to the form the same thing is indicated, and the only question is whether that cross, in the form of a cross substantially, is essential to a good vote. It has been already held that if it be a cross with a mark across it like an X, or like a Winchester cross, and a good many figures of that kind, then it would be perfectly good. This is not a cross; but is it such a departure from a cross as to indicate any intention on the part of the voter otherwise than to record his vote for the person whose name is opposite the bad cross? I cannot myself think that that is so. For my part, I think this is a good vote."

Smith, J., concurred, holding that the case came within the principle of *Woodward v. Sarsons* (1875), L. R. 10 C. P. 733, and that the ballot paper was marked in such a way as to show that the voter intended to vote for the candidate opposite whose name he had placed the mark in question.

<sup>12</sup> Par. Pap. 162 of 1876 p. iv. The case and judgment in *Woodward v. Sarsons* are set out in Appendix IV., p. 369, *infra*.

<sup>13</sup> (1886), 4 O. & H. 112.

<sup>14</sup> *Stepney Division* (1886), 4 O. & H. 37, 38.

In *Buckrose* <sup>14</sup> counsel objected to a vote on the ground that the only mark on the paper was a cross made immediately upon the name of Mr. S., in such a way as to make it appear possible that he intended to strike the name out. The vote was disallowed.

In the same case <sup>15</sup> a vote was objected to on the ground that the cross had been put, not opposite to either of the candidates' names, but in the right-hand top corner of the ballot paper above the line. The Court, following the opinion of Hawkins J., in *Berwick* <sup>16</sup> and of the Court in *Stepney Division*, <sup>18</sup> held that the vote was void for uncertainty.

A vote was also objected to by counsel on the ground that the figures "33" had been written upon the back of the ballot paper. The Court, in the absence of any evidence showing that the voter could be identified by the writing, allowed the vote, <sup>18</sup> following the decision of Field, J., in *Stepney Division*. <sup>19</sup>

A ballot paper had been rejected by the returning officer which had been marked upon the back opposite the name of one of the candidates, and it was contended that, inasmuch as the mark could be seen through the paper without turning it over, it was a good vote.

Pollock, B., said: <sup>20</sup> "I have a very clear opinion that that will not do. If you take the whole context of the Act and read the direction, the voter is to place a cross on the right-hand side opposite the name of each candidate for whom he votes, and that together with the other provision with regard to the returning officer clearly indicates that it must be upon the face of the paper. We think that the vote was properly rejected on the ground that a cross upon the back is not a compliance with the Act."

In the same case ballot papers marked both on the face and on the back and ballot papers marked opposite names of both candidates were respectively allowed and rejected. <sup>20</sup>

Where a ballot paper was marked with a cross on the left-hand side of the respondent's name, and with a straight line on the right-hand side of the petitioner's name, and the vote was objected to on the ground of uncertainty, Pollock, B., said: <sup>20</sup> "I think the cross in one case and the line in the other make it doubtful, and we must reject the vote."

In *Stepney Division*, <sup>21</sup> where the cross had been put on the top of the voting paper opposite the words "Ballot paper," the vote was struck off on the ground of uncertainty.

In the same case the Court was divided in opinion as to whether

<sup>14</sup> (1886), 4 O. & H. 112.

<sup>15</sup> *Ibid.* 111.

<sup>16</sup> 3 O. & H. 182.

<sup>17</sup> (1886), 4 O. & H. 37.

<sup>18</sup> (1886), 4 O. & H. 111.

<sup>19</sup> (1886), 4 O. & H. 40.

<sup>20</sup> *Buckrose* (1886), 4 O. & H. 111.

<sup>21</sup> (1886), 4 O. & H. 37.



a name and a cross on the back of a ballot paper invalidated the vote.<sup>22</sup>

In *Cirencester*<sup>23</sup> Hawkins, J., thus explained the principles by which the Court would be guided in dealing with cases of this kind:—

“With regard to those votes as to which objections have been raised to the mode in which they were marked by the voters, we have proceeded upon what we think was the true intention of the Legislature in framing the Act of Parliament. We have, first of all, asked ourselves whether the voter received his paper with the intention to vote. The mere fact that he has applied for and received a voting paper affords abundant evidence that such was his intention. Then we have looked at the face of the paper itself, with a view to see whether or not the voter has by any mark clearly indicated the person for whom he wished and intended to vote; and if we have found such a mark we have upheld the vote, regardless of the very technical, and as we think unsubstantial, objections which have been allowed in some of the earlier cases to be found in the reports of election cases, our view being that we ought to interpret the Ballot Act liberally, and, subject to other objections, to give effect to any mark on the face of the paper which in our opinion clearly indicated the intention of the voter, whether such mark were in the shape of a cross, or a straight line, or in any other form, and whether made with pen and ink, pencil, or even an indentation made on the paper, and whether on the right or the left hand of the candidate's name, or elsewhere within his compartment on the voting paper. Of course, every deviation from the course pointed out in the rule tends to create difficulties which may be avoided by a rigid observance of it. It is highly prudent therefore to adhere to it, though we do not think it essential. . . .

“Where there are marks and blotches of a very irregular character on the voting paper, which might well be mistaken as indications of temporary unsteadiness in the voters, who thereby imperil their votes, the Court will endeavour to discover whether, although obscured by the blots, blurs, and other marks, there existed obvious indications on the part of the voter of an intention to vote without a thought of leaving behind a trace to enable him to be identified. . . . Of course, if it is on the face of the ballot paper left in doubt whether the man intended to vote for one candidate or the other, the weight of the objection that the vote is uncertain is obvious, for the simple reason that one candidate has just as much right to claim the vote as the other, and so it ought to be counted for neither, and the statute so enacts.”

<sup>22</sup> 4 O. & H. 39—40. The decision on this point in *Wigtown* (1874), 2 O. & H. 216, was, however, not mentioned

to the Court.

<sup>23</sup> (1893), 4 O. & H. 196, 197.

“It has been held,” said Hawkins, J., in *Berwick-upon-Tweed*,<sup>24</sup> “that it is not necessary that this mark should be made with the pencil provided in the compartment, or with a pencil at all. A mark made with ink or with a piece of burnt stick is just as good as a mark made with pencil, and I cannot see any reason why a mark made in any other way is not just as good.”

In the same case one of the ballot papers had been marked with a long cross, one part of which extended into the space opposite the name of the respondent, although the actual intersection of the cross was in the space opposite the petitioner’s name. It was held<sup>25</sup> that this was a good vote for the petitioner. “If,” said Lopes, J.,<sup>25</sup> “you strike out the upper part of the cross, that is, the part opposite the name of the respondent, you will have a perfect cross opposite the petitioner’s name. On the other hand, if you strike off what is opposite to the petitioner’s name, you will have no cross at all.”

In *Pontardawe Rural District Council Election Petition*<sup>27</sup> certain doubtful ballot papers were reserved for the consideration of the Court, among which were three papers in which the marks made by the voters were outside the compartments or ruled spaces on the ballot papers. The marks, however, although outside the compartments, were placed directly opposite the names of certain of the candidates, so as to leave no doubt for whom the voters intended to vote. Ridley, J., said:—“I think that as long as the mark is opposite the name of the candidate, so as to make it clear that the voter intended to vote for him, the vote is good. If the mark were above or below the name it would not be clear, and the paper would be void for uncertainty.”

Phillimore, J., said:—“I agree. The effect of placing the mark outside the printed space may be to make it more difficult to decide for whom the vote was given. But here there is admittedly no difficulty in so deciding. A mark put directly opposite the name of a particular candidate is to my mind a good vote.”

Where the voter writes his own name instead of a cross, as directed, opposite the candidate’s name,<sup>28</sup> or where he writes any name<sup>29</sup> or initials,<sup>30</sup> even though they are not those of the voter or candidate, the vote will be rejected on the ground that the voter may be identified by his handwriting.

NOTE 5.—*The decision of the returning officer as to any question arising in respect of any ballot paper is final, subject to reversal on petition questioning the election or return. As to the duties of the*

<sup>24</sup> (1880), 3 O. & H. 180–181.

<sup>25</sup> (1880), 3 O. & H. 181.

<sup>27</sup> [1907] 2 K. B. 313.

<sup>28</sup> *Woodward v. Sarsons*, L. R.

10 C. P. 733.

<sup>29</sup> *Ibid.*; *Wigtown*, *supra*.

<sup>30</sup> Ballot Act, 1872, s. 2.



returning officer as to any question arising in respect of any ballot paper, see pp. 34—42, *supra*.

NOTE 6.—*After ascertaining the result of the poll, the returning officer must forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given.* Upon the completion of the counting the returning officer must seal up in separate packets the counted and rejected ballot papers. He must not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but must proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid,<sup>31</sup> and the unused and spoilt ballot papers in his possession and the tendered votes list, and must reseal each sealed packet after examination. The returning officer must report to the Clerk of the Crown in Chancery the result of such verification, and must, on request, allow any agent of the candidates, before such report is sent, to copy it.<sup>1</sup>

Lastly, the returning officer must forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such Clerk, or as near thereto as circumstances admit) (1) all the packets of ballot papers in his possession; (2) his reports (a) on the number of ballot papers rejected and not counted by him under the four several heads mentioned on p. 34, above, (b) as to the result of the verification of the ballot-paper accounts; (3) the ballot-paper accounts; (4) tendered votes lists; (5) lists of votes marked by the presiding officer; (6) statements relating thereto; (7) declarations of inability to read; (8) packets of counterfoils; and (9) marked copies of registers sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactments shall be construed to include any document forwarded in pursuance of this rule.<sup>2</sup>

In Scotland the returning officer must forward these various papers to the sheriff clerks of the different counties in place of the Clerk of the Crown.<sup>3</sup>

#### ART. 9.—Number of Votes Allowed.

*A man shall not vote at a general election for more than one constituency for which he is registered by virtue of a residence qualification, or for more than one constituency for which he is registered by virtue of other qualifications of whatever kind.*<sup>4</sup>

<sup>31</sup> See p. 33, *supra*.

<sup>1</sup> Ballot Act, 1872, Sched. 1, r. 37

<sup>2</sup> *Ibid.*, r. 38.

<sup>3</sup> *Ibid.*, r. 59.

<sup>4</sup> R. P. Act, 1918, s. 8 (1).

*A woman shall not vote at a general election for more than one constituency for which she is registered by virtue of her own or her husband's local government qualification, or for more than one constituency for which she is registered by virtue of any other qualification.*<sup>5</sup>

NOTE.—The effect of the provisions of sect. 8 (1) of the Representation of the People Act, 1918, which are set out in the above Article, is to limit the number of votes which may be given by a man or a woman at a general election to two and no more.

A man will have two votes if he is registered in one constituency by virtue of a residence qualification,<sup>6</sup> and in another by virtue of some other qualification—i.e., either a business premises qualification,<sup>6</sup> or a university qualification.<sup>7</sup>

A woman will have two votes if she is registered in one constituency by virtue of her own or her husband's local government qualification,<sup>8</sup> and in another by virtue of a university qualification.<sup>9</sup>

**ART. 10.—Offences against Provisions of Ballot Act, 1872, in respect of Nomination Papers, Ballot Papers and Ballot Boxes, and as to Secrecy of Voting.**

*Every person who (1) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or (2) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or (3) without due authority supplies any ballot paper to any person; or (4) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or (5) fraudulently takes out of the polling station any ballot paper; or (6) without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; shall be guilty of a misdemeanour, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.*<sup>10</sup>

*Any attempt to commit any of the above offences shall be punishable in the manner in which the offence itself is punishable.*<sup>10</sup>

*Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in*

<sup>5</sup> R. P. Act, 1918, s. 8 (1).

<sup>6</sup> See R. P. Act, 1918, s. 1.

<sup>7</sup> See *ibid.* s. 2.

<sup>8</sup> See *ibid.* s. 4 (1).

<sup>9</sup> See *ibid.* s. 4 (2).

<sup>10</sup> Ballot Act, 1872, s. 3.



such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.<sup>11</sup>

Every person who acts in contravention of the above provisions as to secrecy of voting shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months with or without hard labour.<sup>11</sup>

NOTE.—Statutory declaration of secrecy.—Every returning officer and every officer, clerk, or agent authorised to attend at the polling station or at the counting of the votes, must, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and, if he is any other officer or an agent, of a justice of the peace or of the returning officer.<sup>12</sup> The provisions of sect. 4 of the Ballot Act, 1872, which are set out in the third and fourth paragraphs of the above Article, must be read to the declarant by the person taking the statutory declaration of secrecy.<sup>13</sup>

#### ART. 11.—Polling Districts.

In every constituency it is the duty of the council whose clerk is the registration officer for the constituency, or by whom the registration officer is appointed as occasion requires, to divide the constituency into polling districts, and to appoint polling places

<sup>11</sup> Ballot Act, 1872, s. 4.

<sup>12</sup> Ibid. Sched. 1, r. 54.

<sup>13</sup> For Form of Declaration, see p. 391, *infra*.

for the polling districts, in such manner as to give to all electors in the constituency such reasonable facilities for voting as are practicable in the circumstances.

Provided that before dividing any constituency in the administrative county of London into polling districts, the authority therefor shall send a draft of any scheme for that purpose to the London County Council, and shall take into consideration any representations made to them by that Council.

If a local authority, or not less than thirty electors, in a constituency make a representation to the Home Secretary that the polling districts or polling places do not meet the reasonable requirements of the electors in the constituency, or any body of electors, the Home Secretary shall consider the representation, and may, if he thinks fit, direct the council whose duty it is to divide the constituency into polling districts to make such alterations as he thinks necessary in the circumstances, and if the council fail to make those alterations within a month after the direction is given he may himself make the alterations, and any alterations so made shall have effect as if they had been made by the council.

On the exercise of any powers given by this provision the council by whom the powers are exercised shall send to the Home Secretary a report, and publish in the constituency a notice, showing the boundaries of any polling districts or the situation of any polling places constituted as a result of the exercise of the power.<sup>14</sup>

NOTE 1.—In the above provision, the expression “local authority” means as respects any constituency the council of any county, borough, urban or rural district or parish wholly or partly situate in the constituency, or the parish meeting of any parish so situate where there is no parish council.<sup>15</sup> Polling districts and polling places constituted before February 6, 1918, remain unaffected by the above provision until occasion arises for the exercise of the powers given thereby.<sup>16</sup>

NOTE 2.—No election can be questioned by reason of any non-compliance with the requirements of this article, or any informality relative to polling districts or polling places.<sup>17</sup>

As to the duty of the returning officer to provide at every polling place a sufficient number of polling stations, see p. 24, *supra*; and as to the places which cannot be legally used as polling places, see p. 25, *supra*.

<sup>14</sup> R. P. Act, 1918, s. 31, as modified by Order in Council dated May 27, 1921 (S. R. O. 1921, No. 959), substituting the Home Secretary for the Local

Government Board.

<sup>15</sup> R. P. Act, 1918, s. 31 (2).

<sup>16</sup> *Ibid.* s. 31 (6).

<sup>17</sup> *Ibid.* s. 31 (4).



## ART. 12.—Who may be a Voter.

At any election for a county or borough any person whose name is on the register of voters for such county or borough is entitled to vote,<sup>18</sup> provided that such person is not, (1) a peer of the United Kingdom,<sup>19</sup> or of Scotland, or of Ireland not actually elected and serving for a constituency in Great Britain<sup>20</sup>; (2) a person holding any one of certain offices<sup>21</sup>; (3) an infant<sup>22</sup>; (4) an alien<sup>23</sup>; (5) an idiot<sup>24</sup>; (6) a lunatic who is not at the time of voting in a lucid interval<sup>25</sup>; (7) an imbecile who is not at the time of voting compos mentis<sup>26</sup>; (8) a person who is so intoxicated as not to be compos mentis at the time of voting<sup>27</sup>; (9) a person convicted of treason or felony and sentenced to death or penal servitude or imprisonment, either with hard labour or exceeding twelve months, unless he has suffered such other punishment as by competent authority may be substituted for the same or received a free pardon, or in the case of penal servitude or imprisonment has suffered the punishment to which he has been sentenced<sup>28</sup>; (10) a person convicted on indictment within the preceding seven years of a corrupt practice at a parliamentary election<sup>29</sup> or convicted within the preceding seven years of a corrupt practice at a municipal election<sup>30</sup>; (11) a person found guilty on summary conviction within the preceding five years of an illegal practice at a parliamentary election within the county or borough in which the election is being held<sup>1</sup>; (12) a person who, as a candidate, election agent or sub-agent, has within the preceding five years been convicted of an illegal employment, payment, or hiring, at a parliamentary election within the county or borough in which the election is being held<sup>2</sup>; (13) a person found guilty of a corrupt or illegal practice or illegal employment, payment, or hiring, at the said

<sup>18</sup> 6 Vict. c. 18, 79; 35 & 36 Vict. c. 33, s. 7; *Stowe v. Jolliffe* (1874), L. R. 9 C. P. 734.

<sup>19</sup> Com. Dig. tit. Parl. D. 10; *Beauchamp (Earl) v. Madresfield* (1872), L. R. 8 C. P. 245; *Bristol (Marquis) v. Beek* (1907), 96 L. T. 55; 71 J. P. 99; 23 T. L. R. 224.

<sup>20</sup> 39 & 40 Geo. 3, c. 67, art. 4; *Banbury* (1797), Heywood, 318; *Droitwich* (1834), K. & O. 65; *Lord Rendlesham v. Haward* (1873), L. R. 9 C. P. 252. The disqualification of peers does not extend to peeresses in their own right (see s. 9 (5) of the R. P. Act, 1918), or, *a fortiori*, by marriage.

<sup>21</sup> See Note 2, p. 53, *infra*.

<sup>22</sup> 7 & 8 Will. 3, c. 25, s. 8; *Stowe v. Jolliffe* (1874), L. R. 9 C. P. 743, 750.

<sup>23</sup> *Middlesex* (1804), 2 Peck, 118; *Bedford* (1832), C. & R. 98; *Isaacson*

*v. Durant* (1886), 17 Q. B. D. 54; *British Nationality and Status of Aliens Act, 1914* (4 & 5 Geo. 5, c. 17), s. 17 (2). A naturalized British subject enjoys all the political and other rights, powers, and privileges of a natural-born British subject. *Ibid.* ss. 3 and 27 (1).

<sup>24</sup> *Bedfordshire* (1785), 2 Lud. 567.

<sup>25</sup> Heywood, 260.

<sup>26</sup> *Bridgewater* (1803), 1 Peck, 108; *Oakhampton* (1791), 1 Fraser, 162.

<sup>27</sup> *Monmouth* (1895), K. & O. 413; *Wigan* (1837), Falc. & F. 695.

<sup>28</sup> *Forfeiture Act, 1870*, s. 2. This has no application to Scotland, *ib.* s. 33.

<sup>29</sup> *Corrupt and Illegal Practices Prevention Act, 1883*, s. 6 (3).

<sup>30</sup> *Municipal Elections (Corrupt Practices) Act, 1884*, s. 2 (2).

<sup>1</sup> *Corrupt Practices Act, 1883*, s. 10.

<sup>2</sup> *Ibid.* s. 21 (2); s. 25 (2); s. 10.

election<sup>3</sup>; (14) a person convicted within the preceding five years of an illegal practice at a municipal election within the borough in which the election is being held<sup>4</sup> or convicted within the preceding five years as candidate at a municipal election of an illegal employment, payment, or hiring<sup>5</sup> within the borough in which the election is being held<sup>4</sup>; (15) a person who has within the preceding seven years been convicted of a corrupt practice, or within the preceding five years of an illegal practice, at the election of a member of a local board, of a member of Improvement Commissioners, or of a poor law guardian<sup>6</sup>; (16) a person who has been convicted, within the preceding six years, of a corrupt offence at the election of a member of a school board which has been held within the preceding six years<sup>7</sup>; (17) a person who has been twice convicted under the Public Bodies Corrupt Practices Act, 1889, s. 2; (18) a person who is reported by an election court or Election Commissioners to have been guilty of any corrupt or illegal practice at an election, whether he obtains a certificate of indemnity or not, provided that he would have been incapable of voting if he had at the date of such election been convicted of the offence of which he is reported to have been guilty<sup>8</sup>; (19) a conscientious objector who is incapacitated during a period of five years after the termination of the late war (August 31, 1921) by sect. 9 (2) of the Representation of the People Act, 1918.

NOTE 1.—This is the effect of sect. 7 of the Ballot Act, 1872, which is as follows:—

“At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote, provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting.”

A candidate may vote if a registered elector.<sup>9</sup>

Bankruptcy is not a disqualification.<sup>11</sup>

A police constable on duty, being an elector in the constituency, may poll at any polling station, on producing a certificate under

<sup>3</sup> Corrupt Practices Act, 1883, s. 36.

<sup>4</sup> Municipal Elections (Corrupt Practices) Act, 1884, s. 7.

<sup>5</sup> *Ibid.* ss. 7, 17 (2).

<sup>6</sup> *Ibid.* ss. 2, 36; Sched. 1.

<sup>7</sup> 33 & 34 Vict. c. 75, s. 91.

<sup>8</sup> Corrupt Practices Act, 1883, s. 38 (5).

<sup>9</sup> *Harwich* (1803), 1 Peck, 383.

<sup>11</sup> *Camelford* (1819), C. & P. 256; *Worcester* (1834), K. & O. 241.

the hand of the chief constable, stating the name of the constable, his number in the police force, his number and description on the register, and the fact that he is unable, owing to being sent on duty, to poll at his proper polling station. The presiding officer to whom such certificate is produced, must allow the constable to vote, and must then cancel the certificate, and place it with the counterfoils of the used ballot papers. <sup>12</sup>

The effect of sect. 7 of the Ballot Act is to render the register at an election conclusive evidence of the right of any person to vote whose name appears therein, and no one is entitled to vote unless his name is on the register of voters for the time being in force. The register is also conclusive evidence before any tribunal inquiring into any election except in the cases of voters to whom some personal disqualification attaches.

In *Stowe v. Jolliffe* <sup>13</sup> Lord Coleridge, C.J., said:—

“I think the true construction of these sections is to make the register conclusive not only on the returning officer, but also on any tribunal which has to inquire into elections, except in the case of persons ascertained by the proviso at the end of sect. 7. These are ‘persons prohibited from voting by any statute or by the common law of Parliament.’”

“I do not think that these words are pointed at any of the cases which my brother Mellor has referred to us. . . . Non-residence within the proper distance of the borough; non-occupation; insufficient qualification—none of these things appear to satisfy the words of this proviso. It does not mean persons who from failure in the incidents or elements of the franchise could be successfully objected to on the revision of the register; it means persons who from some inherent or for the time irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of parliamentary electors. Such, for example, are peers, whether of the United Kingdom, or of Scotland, or of Ireland, persons holding certain offices or employments the subjects of statutory prohibitions, and persons convicted of crimes which disqualify them from voting. I do not say that this list is exhaustive. It is enough to give examples of the cases in which I think the register would be still open.”

The register, therefore, will not be conclusive at the trial of an election petition in the case of the persons mentioned in the above Article, whether the disqualification occurs before or after registration. But in all these cases the presiding officer cannot refuse to deliver a ballot paper if the person's name is on the register, though if he votes his name may be struck off on a scrutiny.

<sup>12</sup> Police Disabilities Removal Act, 1867, s. 2.      <sup>13</sup> (1874), L. R. 9 C. P. 750.



In all cases, however, where the disqualification is not of a personal nature the register will be conclusive even at the trial.

Thus non-residence, non-occupation or insufficient qualification, or other non-personal disqualifications, will not disqualify if the name be in fact on the register.<sup>14</sup>

"It seems to me," said Channell, J., in *Pembroke*,<sup>15</sup> "that the policy of the Legislature has from the time of the Reform Act of 1832 until the Ballot Act been to make it necessary to raise all questions as to right to vote in the registration court,<sup>1</sup> and to do this by preventing them being raised at any other time or in any other manner. . . . The 7th section of the Ballot Act, . . . as interpreted and explained in *Stowe v. Jolliffe*, reads thus: 'At an election a person shall not be entitled to vote unless his name is on the register, even although he ought to be on, and every person whose name is on the register shall be entitled to vote, even if it ought not to be on.'"

The presiding officer is in no way concerned with persons who are disqualified from voting either by the common law of Parliament or by statute. If these persons are on the register their votes must, if tendered, be accepted, though they will be struck off on petition. "Now, the obvious intention of the proviso at the end of sect. 7," said Lush, J., in *Worcester*,<sup>16</sup> "is not in order that any objection of the kind mentioned in that proviso *may be taken in the polling booth*, but the Legislature put in this proviso lest the enacting part should be held to restore or make absolute the qualification of a man who really has no qualification."

"When you say that the register is conclusive, as has often been said, what you mean is this—that it is conclusive that the people who are on it have the qualification which entitles them to be there. It may be that they are not to be entitled to vote by reason of the 7th section of the Ballot Act. . . . Until recent years there was no register, and the register was instituted, I think, for this purpose. There were ways of disputing who had a right to vote—cumbersome and expensive ways—and the register was instituted as a simple method of finding out, . . . who should be put on the register. People could claim to be put on, and people could object to others being put on, and the claims and objections could be investigated by the revising barrister [now the registration officer].<sup>1</sup> But in my judgment the intention of the Legislature . . . was this, to compile a list, which, except in special circumstances which are provided for, should be conclusive as showing those people had

<sup>14</sup> *Stowe v. Jolliffe*, *supra*.

<sup>15</sup> *Per* Channell, J., in *Pembroke* (1901), 5 O. & H. 144.

<sup>16</sup> (1880), 3 O. & H. 187.

<sup>1</sup> The effect of the R. P. Act, 1918, is to abolish the registration court, but the registration officer is substituted therefor.

passed a test as to whether they were to vote or not, and to have been declared to have satisfied that test."<sup>18</sup>

There are only two cases in which the presiding officer ought to refuse to accept the vote: (1) where the person offering to vote is not on the register, and (2) where the person offering to vote declines to answer certain questions which the presiding officer is required to administer to him, or declines to take the oath or make the affirmation required by statute.<sup>19</sup>

No inquiry is permitted at the time of polling as to the right of any person to vote, except that the returning officer or his deputy<sup>20</sup> or clerk or the presiding officer<sup>21</sup> shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or any of them:

*Questions authorised by the Parliamentary Voters Registration Act, 1843, s. 81, as adapted by the Representation of the People (Adaptation of Acts, No. 2) Order, 1918*<sup>22</sup>:—

1. Are you the same person whose name appears as A. B. on the register of electors now in force for the parliamentary county of [or for the division of the parliamentary county of] or for the parliamentary borough of [or for the division of the parliamentary borough of] [as the case may be].

2. Have you already voted, either here or elsewhere at this election for the parliamentary county of [or for the division of the parliamentary county of] or for the parliamentary borough of [or for the division of the parliamentary borough of] [as the case may be].

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanour, and shall and may be indicted and punished accordingly; and the returning officer or his deputy shall if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form<sup>1</sup>:

"I swear by Almighty God [or I do solemnly, sincerely and truly declare and affirm, as the case may be] that I am the same person whose name appears as A. B. on the register of electors now in force for the parliamentary county of [or for the division of the parliamentary county of] or for the parliamentary borough of [or for the division of the parliamentary borough of] [as the case may be], and that I have not before voted, either here or elsewhere, at the present

<sup>18</sup> *Per* Darling, J., in *Pembroke* (1901), 5 O. & H. at pp. 137, 138.

<sup>19</sup> Parliamentary Registration Act, 1843, s. 82. R. P. Act, 1918, s. 22 (2).

<sup>20</sup> 6 & 7 Vict. c. 18, s. 81.

<sup>21</sup> Ballot Act, 1872, s. 10.

<sup>22</sup> S. R. O. 1918, No. 1361, made

under s. 42 and sixth Sch. para. 7 of the R. P. Act, 1918.

<sup>1</sup> Parliamentary Registration Act, 1843, s. 81. The form of oath is adapted by the Order mentioned in footnote <sup>22</sup>, above.

election for the parliamentary county of [or the division  
of the parliamentary county of [or the parliamentary  
borough of [or for the division of the parliamentary  
borough of ] [as the case may be]."

The meaning of the first of the above questions, and of the corresponding clause in the oath, is not whether the person tendering his vote is rightly named in the register as A. B., but whether he is the person whom the name A. B. was intended to designate there, so that George Jones, if entered in the register as John Jones, would be entitled to answer "Yes" to the question, whilst anyone else, though actually named John Jones, if he did so would be guilty of a misdemeanour.<sup>23</sup>

Thus in *New Sarum*,<sup>24</sup> William Morris was entered on the register as John Morris. He stated at the poll that his name was William Morris, and the returning officer rejected his vote on the ground that his name was not on the register, but on appeal the committee directed it to be added to the poll.

*Questions authorised by the Representation of the People Act, 1918, s. 22 (2).*

1. In the case of a man voting in respect of a residence qualification—

Have you already voted at this general election in respect of a residence qualification?

2. In the case of a man voting in respect of a qualification other than a residence qualification—

Have you already voted at this general election in respect of a qualification other than a residence qualification?

3. In the case of a woman voting at an election other than a university election—

Have you already voted at this general election?

[NOTE.—Unless the answer to the question is in the negative the woman shall not vote unless she satisfies the presiding officer that her previous vote was given at a university election.]

It is to be observed that the Representation of the People Act, 1918, does not provide any penalty in the case of a false answer to the questions authorised by it, or for any oath to be administered in connection with those questions, but any person who answered them falsely and proceeded to vote would come within sect. 22 (1) of the Act, and would, therefore, be guilty of an illegal practice.

The questions must be put precisely in the forms prescribed and no vote can be rejected unless they have been so put.<sup>25</sup>

The answers must be positive and unequivocal. Therefore, if a

<sup>23</sup> *R. v. Thwaites* (1853), 1 E. & B. 704.

*Oldham* (1869), 1 O. & H. 152, 153.

<sup>24</sup> (1833), P. & K. 261; see also <sup>25</sup> *Canterbury* (1835), K. & O. 323, 326, 327.



voter, instead of answering "I am," or, "I have not," or words to the same effect, should say, "I think so," or, "I should say I am"; or, "I don't think I have," or, "If I did I should not come here," or give any similarly unpositive or evasive answer, the presiding or other officer would be justified in refusing to give him a ballot paper.<sup>26</sup>

Where a voter, to whom the questions, with or without the oath, are put, then declines to answer, but subsequently presents himself to vote and offers to answer the questions and take the oath if required, the better opinion seems to be that the presiding officer ought to repeat the questions, or administer the oath, with a view to allowing him to vote.<sup>27</sup>

Where a person claims to vote in respect of a qualification in virtue of which someone else has already voted, the presiding officer must deal with the matter as directed by rule 27 of the Ballot Act, 1872. This rule provides that if a person representing himself to be a particular elector named on the register applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (called a "tendered ballot paper"), must be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, must be given to the presiding officer, and endorsed by him with the name of the voter and his number on the register, and set aside in a separate packet, and must not be counted by the returning officer.

The name of the voter and his number on the register must also be entered in the "tendered votes list."

Unless a vote which is void falls under one of the three heads dealt with above, the returning officer is bound to receive the vote as if it were valid, and it can only be dealt with on petition.

As to when votes may be lost or thrown away, see pp. 34—42, *supra*.

NOTE 2.—A person holding any one of certain offices. Under this head come:—(1) a returning officer at the said election, unless upon a count the votes of the candidates are equal, in which case the returning officer, if a registered elector, may give a casting vote,<sup>28</sup> (2) a Scots sheriff, sheriff substitute, sheriff clerk, or deputy sheriff clerk for the shire within which the said election is being held,<sup>29</sup> (3) an assessor of a Scots county; (4) various officers connected with the constabulary and police in Ireland.<sup>30</sup>

<sup>26</sup> *Monmouth, K. & O.* 414: *Taunton, Faulk. & Fitzh.* 503.

<sup>27</sup> *Gloucestershire* (1777), Male. 113.

<sup>28</sup> Ballot Act, 1872, s. 2.

<sup>29</sup> 2 & 3 Will. 4, c. 65, s. 36.

<sup>30</sup> 6 & 7 Will. 4, c. 13, s. 18 (Irish Constabulary); 6 & 7 Will. 4, c. 29, s. 19 (Dublin Metropolitan Magistrates and Police). The disqualifications formerly attaching to the police in Great

**ART. 13.—What Persons can be Legally Employed for Payment by a Candidate.**

A candidate can only employ the following persons for payment<sup>1</sup>:—(1) One election agent<sup>2</sup>; (2) in a county (but not in a borough) one deputy election agent (in the Corrupt Practices Act, 1883, referred to as a sub-agent) for each polling district; (3) one polling agent in each polling station; (4) (a) in a county, for the central committee room, one clerk and one messenger when the number of electors in the county does not exceed 5,000, and an additional clerk and messenger for each additional 5,000 or fraction thereof, (b) in a county, for each polling district, or in a borough, one clerk and one messenger when the number of electors in the polling district or borough does not exceed 500, and an additional clerk and messenger for each additional 500 or fractional part thereof<sup>3</sup>; (5) any person whose employment arises in consequence of the candidate incurring any of the expenses authorised (a) under Schedule I., Part II., of the Corrupt Practices Act, 1883, unless such employment is otherwise prohibited, or (b) under sect. 48 of the said Act in the conveyance of voters by sea in the cases therein specified.<sup>3</sup>

NOTE 1.—If the candidate employs any person for payment other than those mentioned above, he is guilty of an illegal practice,<sup>4</sup> and if he is elected his election will be void.<sup>5</sup> Further, on summary conviction he is liable to a fine of £100,<sup>6</sup> and if reported guilty by an election court he is incapable for seven years of being elected to or sitting in the House of Commons for the county or borough within which the illegal practice has been committed,<sup>7</sup> and in both cases<sup>7</sup> he is also incapable for five years of being registered as an elector, or voting at any parliamentary election, or election for a public office, held for or within the county or borough within which the illegal practice has been committed.

Any such paid election agent, sub-agent, polling agent, clerk and messenger, if he is an elector, is not now disqualified from voting.<sup>8</sup>

NOTE 2.—Any person whose employment arises in consequence of the candidate incurring any of the expenses authorised under Schedule I., Part II., of the Corrupt Practices Act, 1883.<sup>9</sup> These

Britain were abolished by the Police Disabilities Removal Act, 1887. See pp. 350—351, *infra*.

<sup>1</sup> Corrupt Practices Act, 1883, s. 17; *ibid.* Sched. 1, Pt. 1.

<sup>2</sup> *Ibid.* s. 24 (1). The appointment of an election agent is obligatory: *ibid.*

<sup>3</sup> See p. 324, *infra*.

<sup>4</sup> Corrupt Practices Act, 1883, s. 21 (2).

<sup>5</sup> *Ibid.* s. 11.

<sup>6</sup> *Ibid.* ss. 10, 43 (4).

<sup>7</sup> *Ibid.* s. 11.

<sup>8</sup> R. P. Act, 1918, s. 9 (4).

<sup>9</sup> As amended by the R. P. Act, 1918, s. 47 (1), and 8th Sch.

expenses are as follows:—(1) The personal expenses of the candidate; (2) the expenses of printing, the expenses of advertising, and the expenses of publishing, issuing, and distributing addresses and notices; (3) the expenses of stationery, messages, postage, and telegrams; (4) the expenses of holding public meetings; (5) in a borough the expenses of one committee room, and if the number of electors in the borough exceeds 500, then of a number of committee rooms not exceeding the number of one committee room for every complete 500 electors in the borough, and if there is a number of electors over and above any complete 500 or complete five hundreds of electors, then of one committee room for such number, although not amounting to a complete 500; (6) in a county the expenses of a central committee room, and, in addition, of a number of committee rooms not exceeding in number one committee room for each polling district in the county, and where the number of electors in a polling district exceeds 500 one additional committee room may be hired for every complete 500 electors in such polling district over and above the first 500.

For the decisions of the Courts as to what constitutes illegal employment, see pp. 183—187, *infra*.

#### ART. 14.—Election Agent Obligatory. Who may be Appointed.

*Every candidate must appoint an election agent, but may not appoint more than one; such election agent must be named by or on behalf of the candidate on or before the nomination day, and the name and address of such agent must be declared in writing by a candidate or by some other person on his behalf to the returning officer on or before the nomination day.*<sup>10</sup>

*A candidate may appoint, to be his election agent, himself,<sup>10</sup> a sheriff substitute, sheriff clerk, or town clerk,<sup>11</sup> or any other person—except (1) a returning officer for such county or borough or his deputy,<sup>12</sup> or any partner or clerk of either of them<sup>13</sup>; (2) an officer appointed by the returning officer in pursuance of the Ballot Act or any partner or clerk of such officer<sup>13</sup>; (3) any person whom he knows to have been in the preceding seven years convicted of any corrupt practice by any competent tribunal, or reported guilty thereof by a committee of the House of Commons, or a judge upon an election petition under the Parliamentary Elections Act, 1868, or commissioners appointed in pursuance of the Election Commissioners Act, 1852.*<sup>14</sup>

*The appointment of the election agent is revocable, and in the*

<sup>10</sup> Corrupt Practices Act, 1883, s. 24.

<sup>13</sup> Ballot Act, 1872, s. 11.

<sup>11</sup> 2 & 3 Will. 4, c. 65, s. 66.

<sup>14</sup> Parliamentary Elections Act, 1868,

<sup>12</sup> Representation of People Act, 1867, s. 50. s. 44.



event of a revocation of the appointment or death of an election agent, whether before, during or after the election, another election agent must be appointed forthwith, and his name and address declared in writing to the returning officer.<sup>15</sup>

NOTE.—The office of election agent was created by the Corrupt Practices Act, 1883. “The object of the Act,” said Field J., in *Barrow-in-Furness*,<sup>16</sup> “is, that a person shall be the election agent, who shall be effectively responsible for all the acts done in procuring the election. He is to hire the polling clerks; that is a distinct and positive enactment. He is to hire everybody; no man is to be paid money by anybody that does not pass through his hands. No contract is to be made by anybody but him; he is the person to make the contract, because he is a known and responsible man who can be dealt with afterwards, and who can be looked to afterwards for an explanation of his conduct in the management of the election. It is not to be left, says the Legislature, to uncertain bodies of people, to floating committees, or bodies of that sort, or even to a series of inferior people, who we know in the former days of elections were called managers, and people of various descriptions and denominations, and whose acts no one would be responsible for, or know anything at all about. The object of the Act was, it seems to me, that the affairs of the election should be carried on in the light of day, and that a respectable and responsible man, responsible to the candidate and to the public, should be there to do all that was necessary.”

A candidate can only have one election agent,<sup>17</sup> but the same person can be election agent for two or more candidates.<sup>18</sup> The election agent is not required by statute to have any particular qualification. His appointment need not be in any particular form, nor need he be paid anything for his services. It is, however, desirable that the terms of his appointment should be in writing, and one of them should be that the sum to be paid to him for his services shall be conditional upon there being a sufficient balance to meet the same within the maximum expenditure allowed by statute after payment of all the election expenses.

So far as circumstances admit, the rules applicable in the case of a claim by an ordinary creditor,<sup>19</sup> apply to a claim for his remuneration by an election agent and to the payment thereof, and if any difference arises respecting the amount of such claim, the

<sup>15</sup> Corrupt Practices Act, 1883, s. 24 (4).

s. 24 (4).

<sup>16</sup> (1886), 4 O. & H. at pp. 82, 83.

<sup>18</sup> *Ibid.* Sched. 1, Pt. 5 (4).

<sup>17</sup> Corrupt Practices Act, 1883, p. 138, *infra*.

<sup>19</sup> As to what these rules are, see

claim will be regarded as a "disputed claim,"<sup>20</sup> and will be dealt with in the same manner as any other disputed claim.<sup>21</sup>

*Time of appointment.*—The election agent need not be appointed until the nomination day.<sup>22</sup> It is, however, very desirable that his appointment should not be unnecessarily delayed, for, until it is made, no polling agent, clerk, or messenger employed for payment can be appointed, and no committee room hired, on behalf of the candidate<sup>23</sup>; nor is any contract whereby expenses are incurred on account of or in respect of the conduct or management of an election enforceable against a candidate, unless made by the candidate himself,<sup>24</sup> nor can any payment, advance, or deposit be made in respect of any expenses incurred on account of or in respect of the conduct or management of the election<sup>25</sup>; nor can any person incur any expense on account of holding meetings or issuing advertisements, circulars, or publications for the purpose of promoting or procuring the election of the candidate.<sup>26</sup>

*Election agent must have an office and ought to keep certain books.*—The election agent must have an office or place to which all claims, notices, writs, summonses, and documents may be sent, within the county or borough where the election is to take place, or within a county of a city or town adjoining thereto; and the address of such office or place must be declared to the returning officer at the same time as the appointment of the election agent.<sup>27</sup> If a candidate appoints himself as his election agent, he must in like manner furnish the address of such an office or place.

The election agent "should enter in a book who are the responsible people, who are the agents, who are the clerks, who are the canvassers and so on; and if this is done, at any rate he cannot be complained of for not having done his duty and shown a thorough desire to act honestly."<sup>28</sup>

"He ought to keep a cash-book, in which everything should be set down in chronological order, so that it can be told by looking at the cash-book exactly when each sum was spent, how it was spent, and to whom it was given. He would be well advised also if he had an order-book with counterfoils, which should be numbered consecutively, and wrote down every order upon the form and upon the counterfoil, so that by an inspection of the book one could at once see that all the counterfoils were there, and that everything that had been ordered was put down in its place, and on the counterfoil that belonged to it. Lastly, he would be wise to have a receipt book

<sup>20</sup> As to what constitutes a "disputed claim," see also p. 140, *infra*.

<sup>21</sup> Corrupt Practices Act, 1883, s. 32 (1).

<sup>22</sup> *Mayo* (1874), 2 O. & H. 191.

<sup>23</sup> Corrupt Practices Act, 1883, s. 27 (1).

<sup>24</sup> *Ibid.* s. 27 (2).

<sup>25</sup> *Ibid.* s. 28 (1).

<sup>26</sup> See R. P. Act, 1918, s. 34.

<sup>27</sup> Corrupt Practices Act, 1883, s. 26 (1).

<sup>28</sup> *Per Cave, J., in Pontefract* (1892), Day's Election Cases, 35.

made up in a similar form, and to take a receipt from the persons to whom he pays any money, upon one of these forms, using them also again consecutively and in chronological order. When a man has got those documents he can come with confidence before an election tribunal and say: 'These books represent everything I have ordered, everything I have spent, everything I have paid.'"<sup>29</sup>

It is the duty of the election agent to transmit to the returning officer a true return respecting election expenses; such return must be in a certain form and must be accompanied by a formal declaration by the election agent. See Article 24, p. 138, *infra*.

#### ART. 15.—Sub-Agents (or Deputy Election Agents).

*A sub-agent can be appointed at an election in a county, but not at an election in a borough.*<sup>30</sup>

*Every sub-agent who is employed for payment must be appointed by the election agent at least one clear day before the polling, and not more than one sub-agent may be appointed to act within each polling district.*<sup>1</sup>

*The name and address of every sub-agent must be declared in writing to the returning officer by the election agent one clear day before the polling.*<sup>2</sup>

*The appointment of a sub-agent is not vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent for the time being of the candidate, and in the event of such revocation or of the death of a sub-agent another sub-agent may be appointed, and his name and address shall be forthwith declared in writing to the returning officer, who shall forthwith give public notice of the same.*<sup>3</sup>

*Anyone may be appointed sub-agent, unless he is disqualified to be an election agent.*<sup>4</sup>

*As regards matters in a polling district, the election agent may act by the sub-agent for that district, and anything done for the purposes of the Corrupt Practices Act, 1883, by or to the sub-agent in his district shall be deemed to be done by or to the election agent, and any act or default of a sub-agent which, if he were the election agent, would be an illegal practice or other offence against the Act, shall be an illegal practice and offence against the Act committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly; and the candidate shall suffer the like incapacity as if the said act or default had been the act or default of the election agent.*<sup>5</sup>

<sup>29</sup> *Per Cave, J., in Stepney (1892), Con. Elect. Judgm., at p. 94.*

<sup>30</sup> *Corrupt Practices Act, 1883, s. 25 (1), Sched. 1, Pt. 1 (2).*

<sup>1</sup> *Corrupt Practices Act, 1883, s. 25, Sched. 1, Pt. 1 (2).*

<sup>2</sup> *Corrupt Practices Act, 1883, s. 25 (3).*

<sup>3</sup> *Ibid. s. 25 (4).*

<sup>4</sup> *See Article 14, p. 55, supra.*

<sup>5</sup> *Corrupt Practices Act, 1883, s. 25 (2).*



NOTE.—The office of deputy election agent, or, as it is called in the Corrupt Practices Act, 1883, sub-agent, was, like the office of election agent, created by that Act. Certain persons “perform the duty of sub-agents, they conduct the election in their own particular districts, and the Act intended that, where that is the case, they should be nominated as sub-agents in order that where the election agent had necessarily to delegate his authority to other people it might be known who they were, and they might be held responsible for their acts and omissions. It is for the very purpose that agency under such circumstances should not be in dispute, and that the persons who conduct the election locally should be responsible in the way in which election agents are responsible, and not in the way in which an ordinary agent is responsible, that the Act requires that they shall be appointed sub-agents, and not that they should either not appear as agents at all or be put down as clerks.”<sup>6</sup>

Every sub-agent must have within his district, or within a county of a city or town adjoining thereto, an office or place to which all claims, notices, writs, summonses, and documents may be sent, and the address of such office or place shall be declared at the same time as the appointment of the said agent to the returning officer, and shall be stated in the public notice of the name of the agent.<sup>7</sup>

#### ART. 16.—Polling Agents, Clerks, and Messengers.

*The appointment of every polling agent, clerk, and messenger, employed for payment, must be made by the election agent by himself or by his sub-agent, and only one polling agent can be appointed in each polling station.*<sup>8</sup>

*Notice in writing of the name and address of every such polling agent, clerk, and messenger, employed for payment, must be given by the election agent to the returning officer or his deputy previous to the time fixed for taking the poll.*<sup>9</sup>

*If the polling agent should die or become incapable of acting during the time of election, another may be appointed, and notice in writing of the name and address of the polling agent so appointed must be given forthwith to the returning officer.*<sup>10</sup>

NOTE.—As to the number of paid polling agents, clerks, and messengers that can be legally employed, see Article 13, p. 54, *supra*.

No special form of appointment is required, but in the case of every paid polling agent, clerk, and messenger, the appointment should be in writing, and should state the payment for his services.

<sup>6</sup> *Per Cave, J., in Hexham* (1892),  
Day's Election Cases, at p. 96.

<sup>7</sup> Corrupt Practices Act, 1883.  
s. 26 (1).

<sup>8</sup> *Ibid.* s. 27 (1); and Sched. 1.

Pt. 1 (3).

<sup>9</sup> 6 & 7 Vict. c. 18, s. 85 (England);  
13 & 14 Vict. c. 69, s. 92 (Ireland).

<sup>10</sup> Ballot Act, 1872, Sched. 1, r. 53.

Anyone may be appointed a paid polling agent, clerk, or messenger, unless he is disqualified to be an election agent.<sup>11</sup>

The polling agent, or, as he used to be named, the personation agent, attends at the polling station in order if possible to prevent personation. The presiding officer may be required by him to put the questions and administer the oath or declaration allowed by statute to anyone applying for a ballot paper.<sup>12</sup>

If at any time when any person presents himself as a voter, or after he has voted, any polling agent shall declare to the returning or presiding officer that he believes and undertakes to prove that the person voting is not in fact the person in whose name he assumes to vote, or to the like effect, or that he has already voted at the election, the returning or presiding officer is required by word of mouth to order a constable or other peace officer to take such person into custody; for which the above order is to be sufficient authority.<sup>13</sup>

Persons so charged shall be taken before two justices of the county, &c., or borough, &c.; or if the attendance of two cannot be secured within a certain time, viz., within three hours from the close of the poll, then at the request of the person charged the constable is required to take him before one justice, who is to release him on his own recognisance with one sufficient surety to appear before two justices at a specified time. If one such justice shall not be found within four hours after the closing of the poll, then such person is to be forthwith discharged; provided also, that if by reason of the absence of two justices or other cause the charge cannot be inquired into at the time specified, the justices may nevertheless inquire into the charge on a subsequent day, and, if necessary, issue a warrant to apprehend the person charged.<sup>14</sup>

If the justices are satisfied, on the oath of two witnesses, that the person has been guilty of personation, they are to commit him for trial and bind over the witnesses. But if they are satisfied that the charge has been made against him without reasonable or just cause, or if the agent making it, or someone on his behalf, does not appear to support it, they are to make an order on the agent to pay a sum not exceeding £10, and not less than £5, for damages and costs if the person charged should accept it; to be levied under a warrant of any justice, in case of non-payment in twenty-four hours, by distress on the goods of such agent, and if not sufficient, on those of the candidate by whom such agent was appointed; provided that if the person has consented before such justices to accept the sum so

<sup>11</sup> See Article 14, p. 55, *supra*. No time is prescribed for the appointment of clerks or messengers.

<sup>12</sup> 6 & 7 Vict. c. 18, s. 81. For the questions and oath, see pp. 51—52,

*supra*.

<sup>13</sup> 6 & 7 Vict. c. 18, s. 86, as extended by the Ballot Act, 1872.

<sup>14</sup> 6 & 7 Vict. c. 18, s. 87, as extended by the Ballot Act, 1872.

ordered, and the same be paid or tendered, such agent and candidate shall be released from all further proceedings, civil or criminal, on account of such charge and apprehension.<sup>15</sup>

The polling agent must make the declaration of secrecy.<sup>16</sup>

If he endeavours to infringe the provisions of the Ballot Act as to secrecy, he may be removed by the presiding officer; but his conduct will not render the election of the candidate on whose behalf he was appointed void so long as such conduct does not affect the result of the election.<sup>17</sup>

ART. 17.—Committee Rooms, how many, and where Permissible.

*The number of committee rooms that may be hired is as follows: (1) In a borough one committee room for every complete 500 electors in the constituency, and if there is a number of electors over and above any complete 500, or complete five hundreds of electors, then one committee room for such number, although not amounting to a complete 500, and so on; <sup>18</sup> (2) in a county (a) one central committee room, and (b) one committee room for each polling district in the constituency, and where the number of electors in the polling district exceeds 500 one additional committee room for every complete 500 electors in such polling district over and above the first 500.<sup>19</sup>*

*The following premises must not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election: (a) Any premises upon which the sale by wholesale or retail of any intoxicating liquor is authorised by licence, whether the licence be for consumption on or off the premises; (b) any premises where any intoxicating liquor is sold or is supplied to members of a club, society, or association, other than a permanent political club; (c) any premises where refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises; (d) the premises of any public or elementary school in receipt of an annual parliamentary grant or any part of such premises.<sup>20</sup> It is, however, permissible to use any part of the aforesaid premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.<sup>21</sup>*

NOTE.—In accordance with the last of the above provisions it has been held permissible to use as a committee room a room

<sup>15</sup> 6 & 7 Vict. c. 18, ss. 88, 89, as extended by the Ballot Act, 1872.

<sup>16</sup> Ballot Act, 1872, s. 4.

<sup>17</sup> Bolton (1874), 2 O. & H. 138.

<sup>18</sup> Corrupt Practices Act, 1883,

Sched. 1, Pt. 2 (6).

<sup>19</sup> Corrupt Practices Act, 1883, Sched. 1, Pt. 2 (7).

<sup>20</sup> Ibid. s. 20.

<sup>21</sup> Ibid.



forming part of licensed premises ordinarily let for the purpose of holding public meetings, but which had no direct communication with any part of the premises on which liquor was sold.<sup>19</sup> See also p. 188, *infra*.

#### ART. 18.—When an Election is Void.

An election is void—(1) if it is not a real election; or (2) if the election was not conducted in accordance with the principles of the subsisting election laws; or (3) if any of the following corrupt practices: (a) bribery,<sup>20</sup> (b) personation or aiding, abetting, counselling or procuring personation,<sup>21</sup> (c) incurring expense on account of holding public meetings or issuing advertisements etc. for the purpose of promoting or procuring the election without the authority of the election agent,<sup>22</sup> have been committed by the successful candidate or with his knowledge and consent<sup>23</sup>; or (4) if the corrupt practices of treating<sup>24</sup> or undue influence<sup>25</sup> have been committed by the successful candidate<sup>26</sup>; or (5) if the successful candidate has been guilty by his agents of any corrupt practice<sup>27</sup>; or (6) if the successful candidate or his election agent has been guilty of the corrupt practice of knowingly making a false declaration respecting election expenses<sup>28</sup>; or (7) if the successful candidate personally engages any person as a canvasser or agent knowing that such person has within seven years previous to such engagement been found or reported guilty of any corrupt practice<sup>29</sup>; or (8) if any illegal practice has been proved to have been committed in reference to the election by or with the knowledge and consent of the successful candidate<sup>30</sup>; or (9) if the successful candidate has been guilty by his agents of any illegal practice in reference to the election<sup>31</sup>; or in particular (10) if the successful candidate or any agent of his is guilty of any of the illegal practices mentioned in Article 26 (1), (6); or (11) if the successful candidate or his election agent, or sub-agent within his district, is guilty of the illegal practice mentioned in Article 26 (9), or has authorised or consented to the committing of such illegal practice by any other agent, or has paid for the circulation of the false statement constituting such illegal practice, or if the election court finds and reports that the election of such candidate was procured or materially assisted in consequence of such false statement by such other agent<sup>1</sup>; or (12) if the successful candidate or his election agent, or sub-agent within his district, is guilty of any of the illegal practices mentioned in Article 26 (2), (3), (4), (5), (7),

<sup>19</sup> *Cockermouth* (1901), 5 O. & H. at p. 155.

<sup>20</sup> Article 20, p. 91, *infra*.

<sup>21</sup> Article 23, p. 136, *infra*.

<sup>22</sup> Article 25, p. 141, *infra*.

<sup>23</sup> Corrupt Practices Act, 1883, s. 4, and Art. 25, p. 141, *infra*.

<sup>24</sup> Article 21, p. 107, *infra*.

<sup>25</sup> Article 22, p. 123, *infra*.

<sup>26</sup> Corrupt Practices Act, 1883, s. 4.

<sup>27</sup> *Ibid.* s. 5.

<sup>28</sup> *Ibid.* ss. 4, 5, 6, 33 (1), (7);

Article 24, p. 138, *infra*.

<sup>29</sup> Parliamentary Elections Act, 1868, s. 44.

<sup>30</sup> *Ibid.* s. 11 (a).

<sup>31</sup> *Ibid.* s. 11 (b).

<sup>1</sup> See pp. 166—175, *infra*.

or is personally guilty of illegal payment, employment, or hiring<sup>2</sup>; or (13) if the successful candidate or his election agent<sup>3</sup> is guilty of the illegal practice mentioned in Article 26 (8); or (14) if the person elected was disqualified from being a candidate under Article 1.

As to when relief will be granted, see Articles 30, 32, and 33.

NOTE 1.—An election is void if it is not a real election. The election may be void by reason of acts for which the candidate is in no way responsible. Thus it may be void by reason of—(a) general bribery; (b) general treating; (c) general intimidation; (d) irregularities committed by officials which affected the result of the election<sup>4</sup>.

Where there has been general bribery, general treating, or general intimidation, prevalent to such an extent that there could not be a free election, the election is void at common law, even though the acts in question could not be traced to the candidate or any agent of his. In the language of Willes, J., in *Guildford*<sup>5</sup>:—

“Do not be mistaken and suppose that . . . general corruption, quite apart from acts of the members or their agents, would not have the effect of vitiating an election. It clearly would, because it would show there was no pure or free choice in the matter—that what had occurred was a sham, and not a reality.”

“If there has been general corruption, although it does not appear to have been done by any agent,—I mean either general corruption, preventing the election representing what it ought to represent, that is, the feeling of the constituents; or general intimidation, so that you may say it is evident that the election is not a free one,—in that case, although it is not brought home to the agent, the election would not be good by the common law of Parliament”<sup>7</sup>.

“The policy and the theory of the law is, that a man upon whom the elective franchise is conferred should judge for himself which is the best and preferable candidate, and give his vote accordingly. But influences are brought to bear upon men which cannot be prevented. There are some influences which are called due influences, and other influences which are called undue influences, and the law has endeavoured to punish the use of undue influences. Amongst these influences there are what are called bribery, treating, and oppression, that is, an improper and undue pressure put upon a man. But if pressure is put upon a man, or a bribe

<sup>2</sup> Articles 27, 28, 29, pp. 175, 181, 187, *infra*.

<sup>3</sup> As to the effect of the acts of a sub-agent, see Corrupt Practices Act, 1883, ss. 25, 34.

<sup>4</sup> *Athlone* (1843), B. & A. 122; *Rye* (1848), P. R. & D. 112; *Longford* (1870),

2 O. & H. 7; *Howes v. Turner* (1876), L. R. 1 C. P. D. 670; *East Clare* (1892),

4 O. & H. 163.

<sup>5</sup> (1869), 1 O. & H. 15.

<sup>7</sup> *Per* Blackburn, J., in *Stafford* (1869), 1 O. & H. 234.

is administered to him, no matter by whom, or refreshments are given to a man, no matter by whom, for the purpose of affecting his vote, the effect is to annihilate the man's vote, because he gives his vote upon an influence which the law says deprives him of free action; he becomes a man incompetent to give a vote, because he has not that freedom of will and of mind which the law contemplates he ought to have for the purpose of voting. But that affects the man alone, it does not affect the candidate; it has merely the effect of extinguishing the vote, and if there was a scrutiny for the purpose of ascertaining who had the majority of lawful votes, that man's vote ought to be struck off the poll, but that is all. But it has been long held, before these Acts of Parliament passed at all, that by the common law of the land, that is, law not created by the enactments of Acts of Parliament, bribery, undue influence, and undue pressure vitiate an election. So that if it had been proved that there existed in this town, generally, bribery to a large extent, and that it came from unknown quarters, that no one could tell where it had come from, but that people were bribed generally and indiscriminately; or if it could be proved that there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it,—by the common law such election would be void, because it would be carried on contrary to the principle of the law.”<sup>8</sup>

In *Hackney*<sup>9</sup> Grove, J., in discussing the effect on an election of irregularity in the opening of polling stations, said: “Counsel was bound to admit that if the irregularity was so great as to prevent the election being a true election, that would avoid it even at common law. . . . An election which is conducted in such a way as (whether by accident or design) not to afford to the very large mass of the electors an opportunity of voting, cannot be a true election of members.”

In *Warrington*<sup>10</sup> it was held that confusion at the polling booth does not avoid the election. It is the duty of every voter to tender his vote to the poll clerk. “If,” said Martin, B., “a man, instead of asking who was the person to take his vote, were to go and put a ticket before a man who is not the polling clerk and leave it there, that man has not voted at all. He has no right to complain. He ought to have taken the ordinary trouble to ascertain that he had voted aright. What more can the mayor possibly do than put a poll clerk in the booth? If people will not inquire who is the poll clerk, they must take the consequences.”

In *Woodward v. Sarsons*<sup>11</sup> the Court of Common Pleas (Lord

<sup>8</sup> *Per* Martin, B., in *Bradford* (1869),  
1 O. & H. 40, 41.

<sup>9</sup> (1874), 2 O. & H. at p. 81.

<sup>10</sup> (1869), 1 O. & H. at p. 45.

<sup>11</sup> (1875), L. R. 10 C. P. 733; see  
Appendix IV., p. 380, *infra*.



Coleridge, C.J., Brett, Archibald and Denman, J.J.), in a considered judgment, laid down the law as follows:—"An election is to be declared void by the common law applicable to parliamentary elections if it was so conducted that the tribunal which is asked to avoid it is satisfied, as matter of fact, that there was no real *electing* at all. The tribunal should be so satisfied, *i.e.*, that *there was no real electing by the constituency at all*, if it were proved to its satisfaction that the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as by polling stations being demolished or not opened, or by other of the means of voting according to law not being supplied, or supplied with such errors as to render the voting, by means of them, void, or by fraudulent counting of votes, or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think that the same result should follow if, by reason of any such or similar mishaps, the tribunal, without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors *may have been* prevented from electing the candidate they preferred. But if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the tribunal to declare the election void by the common law of Parliament. This, we think, is the result of comparing the judgments of Grove, J., at Hackney<sup>12</sup> and Dudley<sup>13</sup> with the judgments of Martin, B., at Salford,<sup>14</sup> and of Mellor, J., at Bolton,<sup>15</sup> all which judgments are in accordance with, but express more accurately the grounds of, the decisions in Parliament in the older cases of Norfolk,<sup>16</sup> Morpeth,<sup>17</sup> Pontefract,<sup>18</sup> Coventry,<sup>19</sup> New Ross,<sup>20</sup> and Drogheda."<sup>21</sup>

"Freedom of election," said Andrews, J., in *South Meath*,<sup>22</sup> "is at common law absolutely essential to the validity of an election. If this freedom be prevented generally, the election is void at

<sup>12</sup> (1874), 2 O. & H. 77, 81.

<sup>13</sup> *Ibid.* 115, 121.

<sup>14</sup> (1869), 1 O. & H. 133, 140.

<sup>15</sup> (1874), 2 O. & H. 138, 142.

<sup>16</sup> (1679), Heyw. Co. Elect. 555 n.

<sup>17</sup> (1775), 1 Dougl. 147.

<sup>18</sup> *Ibid.* 377.

<sup>19</sup> P. & Kn. at p. 388; C. & K. at p. 276.

<sup>20</sup> (1853), 2 Pow. Rod. & D. 188.

<sup>21</sup> (1859), W. & D. 206.

<sup>22</sup> W. & D. 206; 1 O. & H. 252, 257.

common law, and, in my opinion, it matters not by what means the freedom of election may have been destroyed. This is wholly independent of statute law. It would be absurd and unnatural to contend that there could be a valid election which was not a free election. The statute law not only leaves this common law principle intact, but supplements it by stringent enactments, visiting candidates and all others with severe penalties for interfering with the purity or freedom of elections either directly or indirectly."

NOTE 2.—*That the election was not conducted in accordance with the principles of the subsisting election laws.* This principle of the common law of Parliament was laid down in numerous cases, and it is now expressly recognised by statute, for by sect. 13 of the Ballot Act, 1872, it is provided that "no election shall be declared invalid by reason of a non-compliance with the rules contained in the 1st Schedule to this Act, or any mistake in the use of the forms in the 2nd Schedule to this Act, if it appears to the tribunal having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election."

It should be noticed that the rules in the 1st Schedule of the Ballot Act and the forms in the 2nd Schedule are directory enactments as distinguished from the absolute enactments in the sections in the body of the Act, and that "an absolute enactment must be obeyed or fulfilled exactly; it is sufficient if a directory enactment be obeyed or fulfilled substantially."<sup>23</sup>

In their considered judgment in *Woodward v. Sarsons*<sup>24</sup> the Court said: "An election is to be declared void by the common law applicable to parliamentary elections, if it was so conducted that the tribunal which is asked to avoid it is satisfied as matter of fact . . . that the election was not really conducted under the subsisting election laws. . . . As to this, *i.e.* that the election was not really conducted under the subsisting election laws at all, though there was an election in the sense of there having been an election by the will of the constituency, we think that the question must in like manner be, whether the departure from the prescribed method of election is so great that the tribunal is satisfied as matter of fact that the election was not an election under the existing laws. It is not enough to say that great mistakes were made in carrying out the election under those laws; it is necessary to be able to say that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole

<sup>23</sup> *Woodward v. Sarsons* (1875), <sup>24</sup> *Ibid.* at p. 748.  
L. R. 10 C. P. at p. 746.

constituency, a candidate had been selected by tossing up a coin, or by the result of a horse-race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, where the election is to be an election by ballot, if either wilfully or erroneously a *whole constituency* were to vote, but *not by ballot at all*, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election law. But if, in the opinion of the tribunal, the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act could justify the tribunal in declaring the election void by the common law of Parliament. We agree upon this point with the answer attributed to Martin, B., before a Committee of the House of Commons, with his decision at Salford, and with the decisions of Mellor, J., at Bolton,<sup>1</sup> and of Barry, J., at Drogheda."<sup>24</sup>

In *Greenock*,<sup>25</sup> where irregularities had been committed in dividing the borough into polling districts and assigning to voters their proper polling books, the election was held void.

"If . . . the Court sees that the effect of the transgressions was such that the election was not really conducted under the existing election law, or it is open to reasonable doubt whether these transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting, in accordance with the laws in force relating to elections, the Court is then bound to declare the election void. . . . And it is to be borne in mind by the tribunal which has to consider the validity of elections that it ought to act with great caution. 'I adhere,' said Mr. Baron Martin in the *Warrington* case,<sup>26</sup> 'to what Mr. Justice Willes said at Lichfield, that a judge, to upset an election, ought to be satisfied beyond all doubt that the election was void; and that the return of a member is a serious matter, and not lightly to be set aside.'"<sup>27</sup>

In *Warrington*,<sup>28</sup> before using the words quoted above, Martin, B., said: "Supposing it happened that the votes of half a dozen out of 2,000 or 3,000 voters are omitted to be taken, are all the other votes to be set aside, and the election declared void? It would be . . . ridiculous to say that because at one booth there is an irregularity the whole of the rest of the borough should be put to

<sup>1</sup> (1874), 2 O. & H. 138.

<sup>24</sup> (1874), 2 O. & H. 201.

<sup>25</sup> (1869), 1 O. & H. 249.

<sup>26</sup> (1869), 1 O. & H. at p. 44.

<sup>27</sup> *Per* Kennedy and Darling, JJ., in *Islington* (1901), 5 O. & H. at pp. 125,

126. See also *Mayo* (1874), 2 O. & H. 191; *Drogheda*, *ibid.* 201. *Cf.* *Gribbin v. Kirker* (1873), 7 Ir. Rep. C. L. 30; *Greenock* (1869), 1 O. & H. 249.

<sup>28</sup> (1869), 1 O. & H. 42.



the trouble of a new election, and all that has taken place declared null and void.”<sup>29</sup>

In *Drogheda*,<sup>30</sup> in consequence of some unforeseen accident, the polling stations were not opened at the statutory hour of 8 a.m., and no votes were or could be received until 8.45 a.m. It was clear that the fact of not opening the polling stations until three-quarters of an hour after the appointed time had no effect whatever upon the result of the election, and that not a single voter was in consequence prevented from voting; in fact, the whole constituency was almost entirely polled out before the poll was closed. The Court refused to hold the election invalid by reason of this irregularity.

So, too, in *East Clare*,<sup>1</sup> it was held that irregularities on the part of the returning officer, not affecting the result of the election, did not render the election invalid.

In that case it was proved that at two of the polling places the presiding officers had closed the poll while they adjourned for lunch, and that in one of them the presiding officer had by a *bonâ fide* mistake omitted to detach the voting paper from the counterfoil in 195 cases, but had given the voting paper with the counterfoil attached to the voter, and after receiving it back had placed it, with the counterfoil so attached, in the ballot-box, and the votes were therefore bad. O'Brien, J., said: “I think that these mistakes, although undoubtedly large, fall within sect. 13 of the Ballot Act, 1872, and that the election ought not to be declared invalid in consequence of them. Section 13 provides that an election shall not be declared invalid, by reason of a mistake or non-compliance with the rule, if the election is conducted in accordance with the principles of the Act, and if the non-compliance or mistake did not affect ‘the result of the election.’ I do not at all agree with the construction put upon that section by Mr. Justice Grove in the *Hackney* case (2 O. & H. 77). . . . In my opinion that decision is entirely wrong. In *Woodward v. Sarsons* (L. R. 10 C. P. 733), no less than 294 votes were spoiled by the mistake of the presiding officer, but they would not, if admitted, have turned the scale against the successful candidate, and therefore did not affect ‘the result of the election.’ It was held that this did not render the election invalid, but that sect. 13 applied. In fact, that case is altogether decisive of the present case.”

Johnson, J., concurred, and observed that “the election was a real election of the successful candidate by the majority of the electors, and was conducted in substance according to the rules of law, and that the admitted mistakes which had been made did not

<sup>29</sup> *Warrington* (1869), 1 O. & H. 44. v. *Kirker* (1873), 7 Ir. Rep. C. L. 30.

<sup>30</sup> (1874), 2 O. & H. 201. Cf. *Gribbin* <sup>1</sup> (1892), 4 O. & H. 163.

affect the result of the election. It ought, therefore, not to be invalidated."

The Ballot Act, 1872, s. 4, contains strict provisions for the maintaining of the secrecy of voting, and severe penalties for their infringement. A deliberate violation of these provisions by a polling agent will not however avoid the election,<sup>2</sup> unless, indeed, it has affected the result of the election.<sup>3</sup>

In *Bolton*,<sup>4</sup> the respondent's polling agent at each polling station was furnished with a register of the voters to which tickets were attached opposite the name of each voter. As soon as a voter had voted the agent stealthily tore off the ticket and put it in his pocket, and subsequently conveyed it to some person outside the polling station, and by this means persons outside knew, while the poll was going on, who had voted and who had not voted. It was proved by the petitioners that this proceeding was a deliberate and wilful violation of the provisions of the Ballot Act, and it was contended on their behalf that in consequence the election ought to be declared void. In delivering judgment, Mellor, J., said: "There is no doubt that the Legislature, when it passed the Ballot Act, did intend that that should be a perfectly secret mode of voting, as far as any instrumentality or machinery which it could provide could make it so. . . . But, as it seems to me, no foundation for attacking the seat can arise from the act of the personation agent, or any other officer connected with the election. The punishment is specified by the Legislature; it must be found within the four corners of the Act of Parliament, and I have no power, neither has the common law any power, to supplement any additional penalty upon either the persons who transgressed the law or the persons for whose sake or in whose favour such an act may have been done."

The respondent was declared duly elected.

In *Woodward v. Sarsons*,<sup>5</sup> where the presiding officer marked the face of the ballot paper with the number of the voter on the burgess roll before delivering it to the voter for use,<sup>6</sup> so that the voters might have been identified, though this was not in fact done, it was held that this did not avoid the election, though it would avoid these votes on a scrutiny.

In the same case the presiding officer wrapped up each of the voting papers of illiterate voters in the corresponding declaration of inability to read,<sup>6</sup> and placed them in the ballot box, so that it would have been possible for the voters to be identified at the counting of the votes, though this was not in fact done. It was held that the election was not thereby avoided.<sup>5</sup>

<sup>2</sup> *Bolton* (1874), 2 O. & H. 138.

<sup>3</sup> Ballot Act, 1872, s. 13.

<sup>4</sup> (1874), 2 O. & H. 138.

<sup>5</sup> (1875), L. R. 10 C. P. 733, 748.

<sup>6</sup> See Ballot Act, 1872, 1st Sched., rr. 26, 29.

The election is not avoided by an omission of the election officers to make the required declaration of secrecy.<sup>7</sup>

NOTE 3.—*If the candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a Committee of the House of Commons, or by the report of the judge upon an election petition, or by the report of the commissioners, the election of such candidate shall be void.* The candidate is proved to have “personally engaged” the canvasser or agent if the latter has been appointed with the candidate’s knowledge and consent; it is not necessary to prove that the candidate has had a personal interview with him.<sup>8</sup>

“The nature of the employment . . . must be ‘as a canvasser or agent for the management of the election.’ . . . The sort of agency pointed at is not by any means confined to a paid agent, but . . . he must be an agent for the management of the election. I do not think,” said Blackburn, J., “that it is necessary that he should be an agent for the management of the whole election; it is enough if he is an agent for part of the election: he must be not simply an agent who might be employed to such an extent as might make the candidate answerable for corrupt practices committed by him, but he must be employed in the way of managing a portion of the election.”<sup>9</sup>

NOTE 4.—*Distinction between corrupt and illegal practice.* “A corrupt practice is a thing the mind goes along with.<sup>10</sup> An illegal practice is a thing the Legislature is determined to prevent, whether it is done honestly or dishonestly.”<sup>11</sup>

“An illegal practice involves no question of motive, pure or otherwise.<sup>1</sup> The only question the Court has to consider is, whether there has been a breach of the Act.”<sup>12</sup>

Another distinction between a corrupt practice and an illegal practice is that in the case of a corrupt practice (with one exception<sup>13</sup>) the Court has no power to grant relief to anyone personally

<sup>7</sup> *Drogheda* (1874), 2 O. & H. 201.

<sup>8</sup> *North Norfolk* (1869), 1 O. & H. 238; *Norwich* (1871), 2 O. & H. 40.

<sup>9</sup> *North Norfolk* (1869), 1 O. & H. 239; see also *Galway Borough* (1874), 2 O. & H. 196.

<sup>10</sup> An exception must now be made in the case of the corrupt practice created by s. 34 of the R. P. Act, 1918. See p. 141, *infra*.

<sup>11</sup> *Per Field, J.*, in *Barrow-in-Furness* (1886), 4 O. & H. at p. 77.

<sup>1</sup> An exception must, it would appear, now have to be made in the case of the illegal practice of corruptly paying fees to enable a voter to vote at a university election created by R. P. Act, 1918, 5th Sch., Pt. I., r. 29; Pt. II., r. 35. See p. 146, *infra*.

<sup>12</sup> *Per Pollock, B.*, in *Walsall* (1892), Con. Elect. Judgment, at p. 63.

<sup>13</sup> *I.e.*, the corrupt practice created by s. 34 of R. P. Act, 1918. See pp. 141, 192, *infra*.



guilty, whereas in the case of an act or omission which is an illegal practice, the Court has power to except such act or omission from being an illegal practice. As to relief, see Arts. 30—33, pp. 188—200, *infra*.

As to what constitutes a corrupt practice and an illegal practice respectively, see Art. 19, p. 91, *infra*, and Art. 26, p. 143, *infra*; as to their effect on the election, see Art. 18, p. 62, *supra*, and as to the punishment for such practices, see Arts. 34, 35, 36, pp. 200—202, *infra*.

NOTE 5.—*By any agent.* The principles which govern the law of agency in parliamentary elections originated in parliamentary committees,<sup>14</sup> and are distinct from those which apply to the criminal or civil law of agency.<sup>15</sup> They have been thus explained by the election judges:—

“The parliamentary practice, beginning from early times, always was that a member was not merely to lose his seat on account of bribery committed by himself personally, or which he personally did, but that he was also to lose it when he was guilty of bribery by his agents. The reason of that was obvious enough. Candidates put forward agents to act for them, and if it were permitted that these agents should play foul and that the candidate should have all the benefit of this foul play, without being responsible for it in the way of losing his seat if the foul play was committed by the agents without the candidate having precisely known it, great mischief would arise. Then, again, one cannot shut one’s eyes to the fact that, to a great extent, where corrupt practices were committed they were committed by persons who carefully abstained from letting the member know precisely what they were going to do. . . . In that way there was a great deal of corruption. I do not doubt that these two principal grounds led to what was undoubtedly the practice of election committees, that it was not sufficient to say that the member himself was not guilty of corrupt practices, or did not know of them, but that his seat was lost if he was guilty by his agent. And that law, which was recognised by what one may almost call the common law of Parliament, is recognised by the Legislature in the 17 & 18 Vict. c. 102, s. 36.”<sup>16</sup> It is also recognised in the corresponding section (sect. 5) of the Corrupt and Illegal Practices Prevention Act, 1883.

“It is a principle of substantive law that, for the preservation

<sup>14</sup> By the Parliamentary Elections Act, 1868, s. 26, except as otherwise provided by rules, the principles, practice, and rules on which committees of the House of Commons had theretofore acted in dealing with election petitions should be observed so far as might be by the court and judge in the case of

election petitions under that Act.

<sup>15</sup> See the observations of Lord Barcapple in *Greenock* (1869), 1 O. & H. at p. 251, approved by Blackburn, J., in *North Norfolk* (1869), 1 O. & H. at pp. 238, 240.

<sup>16</sup> Per Blackburn, J., in *Staleybridge* (1869), 1 O. & H. 67, 68.

of the purity and freedom of elections, the member returned shall be answerable, not only for his own acts, but for the acts of his agents, whom he puts in his place to represent him in the conduct of the election. It is unnecessary after the luminous discussions of that principle . . . to enlarge upon it. It will be sufficient to dismiss it with an illustration—an illustration, it is true, not involving the constitutional principle which makes the chief value of the rule, but which will at once show its good sense and its justice. If a race were to take place between two vessels for a prize, and the steersman aboard one of those vessels was to thwart his opponent by declining to give way to the vessel that had a right to keep her wind, or if one of the crew hoisted an extra sail not allowed by the rules of the race, and the vessel aboard which that foul play took place was to come in first, the owner could not claim the prize, even by showing that he was away, that he had nothing to do with the misconduct of his servants, or even that he forbade them to be guilty of such misconduct; nor could he mend his position by showing that if no such misconduct had taken place his vessel would nevertheless have been sure to come in first.”<sup>17</sup>

“No sitting member can guard himself against the consequence of the acts of agents, if once they are proved to be agents, by coming before the Court and swearing, even though he may convince the Court he is swearing truly, that he never intended that anything illegal should be done at an election. It is not what he intended, as he explains here, but it is what authority did he give, and did the acts of the person so authorised, legal or illegal, naturally follow the authority which was given? A common and familiar instance occurs to my mind: the wherryman upon the river does not arrive one moment the less certainly at his destination because he happens to be rowing one way and looking another.”<sup>18</sup>

“By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of the agent’s authority. If a man gives another person authority to buy a horse for him, he is responsible for the acts of that person in that transaction; if he gives him a general authority to act in his business for him, he is responsible for all his agent’s acts; but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of agency were put upon acts done at elections, it would be almost impossible to prevent corruption. Accordingly a wider scope has been given to the term.”<sup>19</sup>

<sup>17</sup> *Per* Willes, J., in *Tamworth* O. & H. 302. (1869), 1 O. & H. 81, 82.

<sup>19</sup> *Per* Grove, J., in *Wakefield* (1874),

<sup>18</sup> *Per* Keogh, J., in *Sligo* (1869), 1 2 O. & H. at p. 102.

"The law has decided that a candidate at an election is responsible for the acts of agents who are not, and would not necessarily be, agents under the common law of agency. At common law a person is only responsible for such acts of his agents as are within the scope of the authority which he has given to those agents. For instance, if I authorise a man to buy a horse for me I am responsible for his conduct about the purchase of that horse, but if that man, whom I tell to buy a horse for me, goes and sells a farm of mine, I am not responsible for the act. That is putting it into a very simple form, but with regard to election law the matter goes a great deal farther, because a number of persons are employed for the purpose of promoting an election who are not only not authorised to do corrupt acts, but who are expressly enjoined to abstain from doing them, nevertheless the law says that if a man chooses to allow a number of people to go about canvassing for him, generally to support his candidature, to issue placards, to form a committee for his election, and to do things of that sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election, and then turn his back, or sit quietly by, and let them corrupt the constituency. Therefore the law carries, the responsibility of a member of Parliament for the acts of the agents, who are instrumental with his assent in promoting his election, a good deal farther than the mere common law of agency."<sup>20</sup>

"Under the election law of Parliament a candidate, however morally innocent of any charge, is legally answerable for the practices of his agents."<sup>21</sup>

"In parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election he (the candidate) is responsible for the act of that agent in committing corruption, though he himself not only did not intend it or authorise it, but even *bonâ fide* did his best to hinder it."<sup>22</sup>

"The rule of parliamentary election law that a candidate is responsible for the corrupt act of his agent, though he himself not only did not intend it or authorise it, but *bonâ fide* did his best to hinder it, is a rule that must at times fall with great hardship upon particular persons.<sup>23</sup> . . . Wherever a person is in any way allowed by a candidate, or has the candidate's sanction, to try to carry on his election and to act for him, that is some evidence to show that he is his agent."<sup>24</sup>

<sup>20</sup> *Per* Grove, J., in *Boston* (1874), 2 O. & H. at p. 167.

<sup>21</sup> *Per* O'Brien, J., in *Carrickfergus* (1869), 1 O. & H. at p. 269.

<sup>22</sup> *Per* Blackburn, J., in *Taunton* (1869), 1 O. & H. at p. 182.

<sup>23</sup> *Ibid.* at p. 184.

<sup>24</sup> *Ibid.* at p. 185.



In *Blackburn*,<sup>25</sup> Willes, J., in the course of a judgment which has been repeatedly cited with approval, said: "Nothing can be clearer than this law; it has existed for a very considerable period, I believe certainly from as early as the time of James I. . . . No matter how well the member may have conducted himself in the election, no matter how clear his character may be from any imputation of corrupt practice in the matter, yet if an authorised agent of his, a person who has been set in motion by him to conduct the election or canvass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained.

"As it has been expressed from early time, no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on, or, as it was expressed upon the occasion to which I refer, '*Non coronabitur qui non legitime certaverit*,' which is only so much in Latin showing the antiquity of the principle which I have already expressed in English, and whether it be that the person who contends in respect of any unfair play of his own, whether it be the owner of a horse in respect of the unfair play of his jockey, whether it be the owner of a ship in respect of the fault of his steersman or the hoisting of an additional sail against the rules of the race by one of the seamen, or whether it be a candidate in a parliamentary contest in respect of his agent, in every one of those cases, whether it has been the principal who has been guilty of illegality or whether the illegality has been committed by his agent only, even without his authority or against his will, provided it be done in his agency and for the supposed benefit of his principal, such principal must bear the brunt, and cannot hold the benefit in respect of that in which the agent has compromised him, and would in a matter of this description have also betrayed the public, who have a right that a just election shall be had."

"The relation between a candidate and a person whom he constitutes his agent is much more intimate than that which subsists between an ordinary principal and agent. The closest analogy is that of a sheriff and his under-sheriff and bailiffs. For, as regards the seat, the candidate is responsible for all the misdeeds of his agent committed within the scope of his authority, although they were done against his express directions, and even in defiance of them. There is never any difficulty or doubt as regards this proposition. The difficulty always is when there is no express appointment to determine whether the wrongdoer did or did not stand in the relation of agent to the candidate in respect of the particular matter of complaint. An agent is a person employed

<sup>25</sup> (1869), 1 O. & H. at pp. 201, 202.

by another to act for him and on his behalf, either generally or in some particular transaction. The authority may be actual, or it may be implied from circumstances. It is not necessary, in order to prove agency, to show that the person was actually appointed by the candidate. If a person not appointed were to assume to act in any department of service as election agent, and the candidate accepted his services as such, he would thereby ratify the agency, so that a man may become agent of another in either of two ways: by actual employment or by recognition and acceptance. The next question is, If agent, what is he agent for? If a person were appointed or accepted as agent for canvassing generally, and he were to bribe or treat any voter, the candidate would lose his seat. But if he was employed or accepted to canvass a particular class, as if a master were asked to canvass his workmen, and he went out of his way and bribed a person who was not his workman, the candidate would not be responsible, because this was not within the scope of his authority. And for the same reason, if a person whom the candidate had not in any way authorised to canvass at all for him were to take upon himself to bribe a voter, the candidate would not be responsible for the wrongful act. No candidate could ever secure a seat, if he were made answerable for the acts of unauthorised persons.”<sup>26</sup>

A candidate is not responsible for the acts of a person who canvasses for him, and makes speeches in his favour, if, instead of adopting him as agent, he has endeavoured to dissociate himself from him.<sup>27</sup>

In dealing with this branch of the law in *Taunton*,<sup>28</sup> Grove, J., said: “The law of agency as applied to election petitions has been differently expressed by different learned judges, some of whom have likened it to the relation of master and servant,<sup>29</sup> and another to the employer of persons to run a race for him<sup>30</sup>; but no exact definition, meeting all cases, has, as far as I am aware, been given. Two learned judges—the late Mr. Justice Willes and Mr. Justice Blackburn—have pointed out<sup>1</sup> the difficulties of arriving at one. All agree that the relation is not the common law one of principal and agent, but that the candidate may be responsible for the acts of one acting on his behalf, though the acts be beyond the scope of the authority given, or, indeed, in violation of express injunction. So far as regards the present case, I am of opinion that, to establish agency for which the candidate would be responsible, he must be

<sup>26</sup> *Per* Lush, J., in *Harwich* (1880), 3 O. & H. 69, 70.

<sup>27</sup> *Londonderry* (1869), 1 O. & H. 278.

<sup>28</sup> (1874), 2 O. & H. at pp. 73, 74.

<sup>29</sup> *Per* Martin, B., in *Norwich*, 1 O. & H. at p. 11, and in *Westminster*, *ibid.* at p. 95.

<sup>30</sup> *Per* Willes, J., in *Westbury*, 1 O. & H. at p. 55; *Tamworth*, *ibid.* at p. 81; *Corentry*, *ibid.* at p. 107; *Blackburn*, *ibid.* at p. 202.

<sup>1</sup> *Tamworth* (1869), 1 O. & H. 81; *Staleybridge* (1869), *ibid.* p. 68.



proved by himself or by his authorised agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate must, it seems to me, be a question of degree and of evidence to be judged of by the election petition tribunal. Mere non-interference with persons who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient, in my judgment, to saddle the candidate with any unlawful acts of theirs of which the tribunal is satisfied he or his authorised agent is ignorant. It would be vain to attempt an exhaustive definition, and possibly exception may be taken to the approximate limitation which I have endeavoured to express."

"The law of agency in election cases has now for a period of many years . . . been held . . . to go much further than the ordinary law of principal and agent. Various attempted definitions have been given of it, but I do not think that any one has been entirely successful. . . . Each case in that respect must stand upon its own ground, and it really comes to this, that the Court must see what the relation of the person charged is from the facts of the case, and it is more a matter of inference from facts than anything that is capable of being expressed in positive law."<sup>2</sup>

"No doubt it may seem hard to persons who are not conversant with the law that a man should lose a valuable position, and the dignity it gives, on account of the conduct of somebody who has perhaps disobeyed orders; but it has been pointed out over and over again that, hard as it may appear to the ignorant and uninitiated, this law is the purest justice and common sense. To use the happy illustration of one judge,<sup>3</sup> it is very much like the case of a yacht race where a yacht, with her captain and her crew on board, is waiting for some owner to take possession of her, in order that she may fly his colours and race in his name. When the new owner goes on board and finds the captain and the crew there, the very fact that he consents to sail with them makes them perforce his agents for the purpose of sailing the race in accordance with the laws of the course. The problem in like manner to be solved in these questions as to agency is to what extent the candidate, either actively, or by inaction, has placed or left in a position of command or of management the person whose acts are incupated."<sup>4</sup>

"The law of agency which would vitiate an election is utterly

<sup>2</sup> *Per* Grove, J., in *Wigan* (1881), 4 O. & H. at p. 10. 107; *Blackburn*, *ibid.* 202.

<sup>3</sup> *Willes*, J., *Westbury*, 1 O. & H. 55; *Tamworth*, *ibid.* 81; *Coventry*, *ibid.*

<sup>4</sup> *Per* Bowen, J., in *Wigan* (1881), 4 O. & H. at pp. 11, 12.



different from that which would subject a candidate to a penalty or an indictment, and the question of his right to sit in Parliament has to be settled upon an entirely different principle. Mr. Justice Blackburn, Mr. Justice Willes, and myself unanimously came to the conclusion that any person authorised to canvass was an agent, and it does not signify whether he has been forbidden to bribe or not. If the candidate had told him honestly, 'Do not bribe; I will not be responsible for it,' if bribery was committed, that bribery would affect him. Such is the opinion of Mr. Justice Willes, Mr. Justice Blackburn, and myself. The relation is more on the principle of master and servant than of principal and agent. It has been arrived at after full consideration, and it is a conclusion by which I am prepared to abide. A master is responsible for an act of negligence on the part of his servant, notwithstanding what directions he may have given him, for instance, if he is driving a carriage, and carelessly driving against another does an injury; and if the respondent had told Mr. Hardimount, who is now proved up to the hilt to be an agent, not to commit any illegal act, if he did so, the respondent is responsible for it. It is utterly immaterial whether the respondent had forbidden him to bribe, if he committed bribery, the effect of which would be to destroy his status as a candidate, render him by law incapable of election, and make every vote given to him void."<sup>5</sup>

Where there is no express appointment, the agency must be inferred from facts. "Agency is a result of law, to be drawn from the facts of the case, and from the acts of individuals."<sup>6</sup>

*Evidence required.*—As to the degree of evidence necessary in order to render a candidate liable for a corrupt practice committed by an alleged agent, Martin, B., said<sup>7</sup>: "If I am satisfied that the candidates intended honestly to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, their desire and object being that the proceedings in reference to the election should be pure and honest, I will not unseat such persons upon the supposed act of an agent unless the act is established to my entire satisfaction."

In another case<sup>8</sup> the same judge said: "The law is a stringent law, a harsh law, a hard law: it makes a man responsible who has directly forbidden a thing to be done, when that thing is done by a subordinate creature. It is in point of fact making the arrangement between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified when I am about to apply such a law in requiring to be

<sup>5</sup> *Per* Martin, B., in *Norwich* (1869), 1 O. & H. 10, 11.

<sup>6</sup> *Per* Keogh, J., in *Sligo* (1869), 1 O. & H. 301.

<sup>7</sup> In *Wigan* (1869), 1 O. & H. 192.

<sup>8</sup> *Westminster* (1869), 1 O. & H. at pp. 95, 96.

satisfied beyond all reasonable doubt that the act of bribery was done, and that, unless the proof is strong and cogent—I should say very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person.”

After quoting these passages, Grove, J., said<sup>9</sup>: “Now, without expressing myself in equally strong terms with those used by the learned judge last quoted, I am at all events of opinion that the evidence of corrupt practice must establish affirmatively, to the reasonable satisfaction of the judge, that the acts complained of were done.”

“I quite think,” said Mellor, J., in *Barnstaple*,<sup>10</sup> “the election law is a cruel and somewhat hard law, yet it is too well settled for an election judge to act contrary to it. I say that if an agent, although he may be no agent to the candidate, be employed by the agent of the candidate, he is a sort of subordinate agent, and if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct, . . . he cannot take the benefit of the services of the individual and repudiate them at the same time. But the judge must be satisfied that the man, when he was acting, was acting as the agent for furthering the election of a particular candidate. This . . . must be a question of more or less—it must depend upon the actual belief of the judge. . . . Where it is evident that it was intended that an election should be honestly conducted, and where the expenditure shows that the parties contemplated only that which was honest and legitimate, I should require very conclusive evidence to induce me to declare it void.”

“It has never yet been distinctly and precisely defined,” said Blackburn, J.,<sup>11</sup> “what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption as should constitute agency. I do not pretend to be able to define it certainly; no one yet has been able to go further than to say, ‘As to some cases enough has been established, as to others enough has not been established, to vacate the seat; this case is on the right side of the line, that is on the wrong’; but the line itself has never yet been definitely drawn, and I profess myself unable accurately to draw it.”

“The substance of the principle of agency is that if a man is employed at an election to get you votes, or if, without being employed, he is authorised to get you votes, or if, although neither

<sup>9</sup> *Taunton* (1874), 2 O. & H. pp. 75. 76.

<sup>11</sup> In *Bridgwater* (1869), 1 O. & H. 115, 116.

<sup>10</sup> (1874), 2 O. & H. at pp. 105, 106.

employed nor authorised, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you. . . . Now that is, as I apprehend, clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not in accordance with their wish, but which are directly contrary to it." <sup>12</sup>

"No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown that, either with the knowledge of the member or candidate himself, or to the knowledge of his agents who had employment from him, a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent. It is by no means essential that it should be shown that a person so employed, in order to be an agent for that purpose, is paid in the slightest degree, or is in the nature of being a paid person. But it is a question what is sufficient evidence on that point. . . . I take it that in each case the judge must bring common sense to bear upon it, and satisfy himself whether it is sufficient or not. I do not think that such a question as that would turn upon minute particulars, as to what particular words were used, or what particular thing was done, but upon the common-sense broad view of it." <sup>13</sup>

"For an agent to bind another, it is not necessary that there should be any payment; it is only necessary that the act done by the agent upon which the question arises whether it is to bind the principal should be an act done by the procurement of the principal." <sup>14</sup>

"Agency does not solely depend upon formal appointment by the respondent; . . . it is a fact to be gathered from all the circumstances in evidence in each case." <sup>15</sup>

*Degrees of agency.*—"There is always a great difference in my view on the degrees of agency. As you go lower down you require more distinctly to show that the act was done by a person whom the candidate would be responsible for; as you come higher up it is more as if the candidate had done it himself." <sup>16</sup>

"If a small thing is done by the head agent, it would upset the election; and if small things to a considerable extent were done by

<sup>12</sup> *Per* Channell, J., in *Great Yarmouth* (1906), 5 O. & H. at pp. 178, 179.

<sup>13</sup> *Per* Blackburn, J., in *Bewdley* (1869), 1 O. & H. 17, 18.

<sup>14</sup> *Per* Willes, J., in *Westbury* (1869),

1 O. & H. at p. 55.

<sup>15</sup> *Per* Johnson, J., in *North Meath* (1892), 4 O. & H. at p. 190.

<sup>16</sup> *Per* Blackburn, J., in *Hereford* (1869), 1 O. & H. 195.



a subordinate person, comparatively slight evidence of agency would probably have induced one to find that he was an agent." <sup>17</sup>

"The extent to which a person is agent differs accordingly to what he is shown to have done. An agent employed so exclusively as is shown here (*i.e.*, having money entrusted to his care) does make the candidate responsible not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with. The analogy which I put in the course of the case is a strong one; I mean that of the liability of the sheriff for the under-sheriff, when he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-sheriff employs, and not only responsible for the acts done by virtue of the mandate, but also for the acts done under colour of the mandate, matters which have been carried very far indeed in relation to the sheriff." <sup>18</sup>

"If an agent, although he may be no agent to the candidate, be employed by the agent of a candidate, he is a sort of subordinate agent, and if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct. . . . But the judge must be satisfied that the man, when he was acting, was acting as the agent for furthering the election of a particular candidate." <sup>19</sup>

"On the other hand, (the act) might be limited to the case of a person who was employed to canvass a particular voter or voters only, and then that person would be one whose authority being limited to such voter or voters, his illegal acts in respect of others would not affect the member, because he would be only an agent in the particular limited capacity." <sup>20</sup>

"But I do not think that being asked to canvass two distinct and specific persons would make him a general agent, so that for anything else he might do the candidate would be made responsible."

"Asking an employer to go and canvass his workmen would not be an authority to canvass 'beyond the scope of the workmen in his employ.'" <sup>22</sup>

<sup>17</sup> *Hastings* (1869), 21 L. T. N. S. 106.  
238.

<sup>18</sup> *Bewdley* (1869), 1 O. & H. 18—19;  
*Staleybridge*, *ib.* 69.

<sup>19</sup> *Barnstaple* (1874), 2 O. & H. 105,

<sup>20</sup> *Bodmin* (1869), 1 O. & H. 120.

<sup>22</sup> *Westbury* (1869), 1 O. & H. 47;  
*North Norfolk* (1869), *ibid.* 237.

As to what constitutes agency, it is almost impossible for any judge to lay down such exact definitions and limits as shall meet every particular case, and it is extremely important that the public should know that. . . . It is, therefore, well that it should be understood that it rests with the judge, not misapplying or straining the law, but applying the principles of the law to changed states of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters. It is well that the public should know that they cannot evade the difficulty by merely getting, as they suppose, out of the technical meaning of certain words and phrases.”<sup>23</sup>

In the case just cited Grove, J., said<sup>24</sup>: “A candidate is responsible generally, you may say, for the deeds of those who to his knowledge, for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agent have reasonable knowledge that those persons are so acting with that object.” In other words, “it must be made out that a party, before he is chargeable as an agent, has been entrusted in some way or other by the candidate with some material part of the business of the election which ordinarily is performed, or is supposed to be performed, by the candidate himself. Whether it has any distinct reference to canvassing or anything of that kind appears to me to be immaterial, but in some sense or another he must be considered as entrusted by the candidate with the performance of some part of the business of the election which properly belongs to the candidate himself, though he is unable to perform it in many cases without somebody to aid him. But that entrusting may be made out not merely by an express appointment to the performance of some material duty in reference to the election, but may be made out by implication. The circumstances of each case may differ, but that implication ordinarily must arise from the knowledge which it appears that the candidate has of the part which the person is taking in the election. If that part of the business of an election which ordinarily and properly belongs to the candidate himself be done to the knowledge of the candidate by some other person, it appears to me that that other person is an agent of the candidate, and the candidate is responsible for any corrupt act done by that person.”

In *Aylesbury*,<sup>25</sup> Field, J., said: “The principles . . . as to agency affecting a sitting member are very much wider than agency to affect a principal. It is not a case of principal and agent. The analogy is that of master and servant, and I have come to the

<sup>23</sup> *Per* Grove, J., in *Wakefield* (1874), 2 O. & H. at p. 103.

<sup>24</sup> *Ibid.*

<sup>25</sup> (1886), 4 O. & H. at p. 62.

conclusion that any person whom the candidate puts in his place to do a portion of his task, namely, to procure his election as a member of Parliament, is a person for whose acts he would be liable."

"It is clear that a person is not to be made an agent of the sitting member by his merely acting; that is not enough; he must act in promotion of the election, and he must have authority, or there must be circumstances from which we can infer authority,"<sup>26</sup>

What, then, are circumstances from which this authority will be inferred?

*Canvassing*.—The fact that the candidate has expressly or impliedly employed any person to canvass for him will generally, but not necessarily, constitute that person his agent. "I have stated," said Willes, J., in *Windsor*,<sup>27</sup> "that authority to canvass—I purposely use the word 'authority,' and not 'employment,' because I mean it to apply to persons authorised to canvass, whether paid or not paid for their services—would in my opinion constitute agency."

Authority to manage the election would include authority to canvass.

"... There is the ... class of cases, ... where, ... it being proved that a candidate is having his election carried on by ... certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election. And it is held that he is responsible for it in the sense of making the validity of the election depend upon it. I do not see how these election petitions would be of the least use otherwise, because I suppose that there are very few candidates indeed who undertake the practice of corruption by their own hand. I presume there are equally few candidates, or very nearly so, who ever say to their agents that they are to proceed corruptly in the matter."<sup>28</sup>

"Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll, but to remain neutral, and not to vote for the adversary. No distinction can be drawn except in the amount of favour between voting for a man and abstaining from voting for his adversary."<sup>29</sup>

"It has been held that canvassing with the authority of the candidate, or the candidate canvassing with him, is proof of agency, although there may be exceptions as to that, for instance, where the canvass is limited, or where a person is told only to go and see one or two particular men and ask for their votes. There

<sup>26</sup> Per Pigott, B., in *Stroud* (1874), (1869), 1 O. & H. at p. 251.  
3 O. & H. at p. 11.

<sup>27</sup> (1869), 1 O. & H. 3.

<sup>29</sup> Per Willes, J., in *Westbury* (1869), 1 O. & H. at p. 56.

<sup>28</sup> Per Lord Barcable in *Greenock*



may be cases in which canvassing would not necessarily involve agency, but general canvassing has always been held to be strong evidence of agency, and evidence which requires a very strong case to rebut it, if it can be rebutted. Where the canvassing is general, and where the indiscriminate use of the candidate's name is committed to the person canvassing, that person is generally held to be an agent. . . . No doubt the election cases go much further than the ordinary law." <sup>30</sup>

"There is nothing more difficult or more delicate than the question of agency, but if there be evidence which might satisfy a judge, and if he be conscientiously satisfied that the man was employed to canvass, then it must be held that his acts bind his principal. . . . I should not, as at present advised, hold that the acts of a man who was known to be a volunteer canvasser, without any authority from the candidate or any of his agents, bound the principal. You must show me various things, you must show me that he was in company with one of the principal agents, who saw him canvassing, or was present when he was canvassing, or that in the committee room he was, in the presence of somebody or other, acting as a man would act who was authorised to act. If, putting all these things together, you satisfied me that the man was a canvasser with the authority of the candidate's agents, then I do not look with nicety at the precise steps, but there must be something of that character." <sup>1</sup>

"I do not apprehend that agency is established by merely showing that a particular person has gone about with a candidate and has canvassed. Canvassing will only afford premises from which a judge, discharging the functions of a jury, may conclude that agency is established. If a gentleman comes down to canvass a borough, and, as a kind of guarantee for his respectability, is introduced to the voters by persons of station and position in the borough, I am of opinion that such canvassing, though it would be properly called canvassing, would not be canvassing within the meaning of those words from which I am to infer the agency existed. I draw in my own mind the widest distinction between the kind of canvassing in the presence of the candidate, and canvassing of such a character as to constitute agency." <sup>2</sup>

"Taking a man to point out voters, and to influence them . . . in the candidate's presence, is not conclusive evidence of an employment of that person to go behind the candidate's back and bribe them." <sup>3</sup>

<sup>30</sup> *Per* Grove, J., in *Wigan* (1881), 4 O. & H. 12, 13.

<sup>1</sup> *Per* Mellor, J., in *Bolton* (1874), 2 O. & H. at p. 141.

<sup>2</sup> *Per* Channell, B., in *Shrewsbury*

(1870), 2 O. & H. 36. See also *Durham* (1874), 2 O. & H. 136; *Stroud* (1874), 3 O. & H. 11.

<sup>3</sup> *Per* Hawkins, J., in *Salisbury* (1880), 3 O. & H. at p. 132.

Canvassing from time to time with the candidate is in itself possibly not sufficient evidence of agency, but where the candidate introduces such person to people who are then asked for their votes, and he canvasses upon other occasions with the candidate's daughters, this is sufficient.<sup>4</sup>

*Member of candidate's committee.*—The fact that a person is a member of the candidate's committee is *prima facie* evidence that such person is an agent of the candidate<sup>5</sup>; but for this rule to operate, as Martin, B., pointed out in *Westminster*,<sup>6</sup> the word "committee" must be taken to mean "a limited number of persons in whom faith and confidence is placed by a candidate, and between whom there exists some privity." "I have never supposed," said the learned Baron,<sup>7</sup> "that where a number of people (600 or 700) choose to call themselves 'a committee' thereupon they become 'agents' of the candidate for the purpose of making him responsible for an illegal act done by one of them. I think it is a conclusion that could not be borne out by common sense. The committee-man whom I mean, and whom I would hold the respondent to be responsible for, is a committee-man in the ordinary intelligible sense of the word, that is to say, a person in whom faith is put by the candidate, and for whose acts, therefore, he is responsible."

*Political clubs and associations.*—A political club or association may be an agent for a candidate.

"There appear to be persons who think that a candidate may escape the responsibility attaching to the acts of an agent by the employment of the active members of a political association, instead of an individual or individual agents; if this could be done, the Corrupt Practices Act would become a dead letter. There may be, doubtless, in a borough, a political association existing for the purpose of a political party, advocating the cause of a particular candidate, and largely contributing to his success, yet in no privity with the candidate or his agents, an independent agency, and acting in its own behalf. To say that the candidate should be responsible for the corrupt acts of any member of that association, however active, would be unjust, against common sense, and opposed to law. There may, on the other hand, be a political association in a borough advocating the views of a candidate, of which that candidate is not a member, to the funds of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same time in intimate relationship with his agents, utilised by them for the purpose of carrying out his election, interchanging communication and information with his agents respecting the canvassing of

<sup>4</sup> *Per* Cave, J., in *Rochester* (1892),  
Day's Election Cases, 102.

<sup>5</sup> *Dublin* (1869), 1 O. & H. 272;

*Wakefield* (1874), 2 O. & H. 102.

<sup>6</sup> (1869), 1 O. & H. at p. 92.

<sup>7</sup> *Ibid.*

voters and the conduct of the election, and largely contributing to the result. To say that the candidate is not responsible for any corrupt acts done by an active member of such an association would be repealing the Corrupt Practices Act, and sanctioning a most effective system of corruption.”<sup>8</sup>

Thus in *Blackburn*<sup>9</sup> it was proved that on October 12, that is, about a month before the election, a circular was issued by an association in the town called the Conservative Association, addressed to “every manager, overlooker, and tradesman, and any other person having influence” in the town of Blackburn, requesting them to “secure in the municipal elections as well as the parliamentary the success” of the respondents; and it went on to say, “we venture to urge upon you most strongly the necessity of vigorous personal effort to secure the return . . .” of the respondents. This circular was afterwards adopted by the respondents, and the association which had issued it was adopted by them in place of a committee for the management of the election.

Willes, J., on his judgment,<sup>10</sup> said as to this: “This circular must be taken as being the act of the respondents just as much as if each of them had written a letter to this effect to every ‘manager, overlooker, and tradesman, and any other person having influence’ in the town. . . . Its effect was to make an agent of every person having authority down to the last grade, that of overlookers over the hands, and to request, and therefore authorise, each such to influence the hands who were under him for the purpose of inducing them to vote for the candidates upon whose behalf this document was issued, and any overlooker, and consequently anybody in that or any higher grade, who *bonâ fide* took up the Tory side, and who acted upon the circular and did canvass for the respondents, became their agent, and his acts did bind them.”

On the other hand, as has been pointed out by the Courts, it must not be too hastily assumed that every act which is done by the association is necessarily the act of the candidate himself.

Pollock, B., said<sup>11</sup>: “Although a general election may be approaching, and although a candidate may have been named, I do not agree with the view that every act which after that time is done by the Conservative Association and their immediate agents must be taken to be the act of the candidate himself or as if it were done by an agent, either appointed by him beforehand or whose acts were by him afterwards ratified.”

“If there be a political association upon the one side or upon the other, whose character is permanent—who from month to month

<sup>8</sup> *Per* Lopes, J., in *Bewdley* (1880), at 3 O. & H. pp. 146, 147.

<sup>9</sup> (1869), 1 O. & H. 198.

<sup>10</sup> *Blackburn* (1869), 1 O. & H. 200, 201.

<sup>11</sup> *Walsall* (1892), 4 O. & H. 124.



and from year to year are industrious in watching the register, correcting it, influencing people to get their names put upon the register, and are holding meetings and gatherings for that purpose, (although every piece of conduct on their part must be narrowly and cautiously watched), it is not to be too hastily assumed that because an election takes place at some particular period, every act which is done by the association, although it may be perhaps necessary in the furtherance of the election, makes that association, or the different members of it, necessarily agents for the candidate; or in other words, that although the acts of the members of such association may result in their becoming, from the very necessity of the case, agents of a candidate, those acts which are otherwise innocent, and which would be done whether there was an election or not, do not necessarily become criminal because their indirect effect may extend beyond what was the original intention and object which prompted them. . . . The moment it appears that the candidate or his agent adopt either individually or collectively the work that is done by that association, in such a manner as to benefit by its agency *quoad* the election, then I should look upon this sort of organisation with very grave suspicion, and I should be the very first to say that the agency had been proved.”<sup>11</sup>

In *Walsall*<sup>12</sup> Pollock, B., after contrasting the position of the Licensed Victuallers' Association with that of the Conservative Association, went on to say: “The position of the Conservative Association is, of course, essentially different. However long they may have existed in the town, the time must come when, in carrying out the general interests of the body they represent, they must ally themselves to the candidate who they suppose will best further their purposes, and is best fitted to protect and advocate in Parliament their views. At what time and under what particular circumstances they divested themselves of their more general constitution, and became active in the assistance of the candidate, is a question which, of course, must depend upon the facts of each particular case, and must be in all cases a question of considerable nicety. I content myself on the present occasion with saying that I do not think there has been any breach either of what was right as a question of duty, or of what was prudent as a question of policy, in taking up this cause. Although a general election may be approaching, and although a candidate may have been named, I do not agree with the view that every act, which after that time is done by the Conservative Association and their immediate agents, must be taken to be the act of the candidate himself, or as if it were done by an agent either appointed by him beforehand, or whose acts

<sup>11</sup> *Per* Pollock, B., in *Worcester* (1892), 4 O. & H. at p. 154.

<sup>12</sup> (1892), 4 O. & H. at pp. 124, 125.

were by him afterwards ratified. There are some cases in which, of course, the very nature of the act in itself shows that there must be an agency. A great many others are acts which it may be properly said that an association upon the one side or the other are entitled to carry on, even to the extent of making known their views, which essentially is in itself canvass in one form, to the different voters in the borough, while at the same time they do not pledge themselves to become agents, nor does the candidate become liable as if they were agents."

In cases of this kind it is important to notice that there is a distinction between an association the object of which is to procure the election of a party candidate professing the views of one of the great political parties and an association the object of which is merely to advocate the views and interests of a particular portion of the community.

In *St. George's*<sup>13</sup> Pollock, B., said:—

"In determining the question how far a candidate, by attending the meetings of a political association, makes it or any of its officers his agents, it is necessary first to inquire what is the object and character of the association. If, for instance, its object be simply to secure the election to Parliament of a particular individual, it would be difficult, if not impossible, for a candidate to take part in its operations without becoming responsible for its acts during an election. Again, if the object of an association be to procure the election of some candidate professing the political views of one of the two great parties which are supposed to divide the opinions entertained by the whole electorate of the country, a candidate, if during an election he attended its meetings and availed himself of the assistance of the association, would probably be held so to sanction the association acting on his behalf so as to constitute the officers of the association his agents. Where, however, the object of the association is merely to advocate the views and interests of a particular portion of the community, as where a temperance society forms local branches to uphold the closing of public-houses or local option, and a brewers' or a publicans' association forms branches to support the opposite views, or where Irish Home Rule is advocated by one society and Unionist views by another, the position is different, and a candidate who is invited by a branch association within his division to attend their meeting, to hear their views and to explain his own, does not by so attending necessarily associate himself with their organisation so as to make any of their officers his agents. . . . We consider that we should be carrying the presumption of agency to an unreasonable extent, and far beyond any decision that has yet been given, if we were

to hold that persons who are engaged in various constituencies in actively promoting a particular political principle, such as the maintenance of the Union or the Local Veto Bill, are to be regarded as the agents of all those candidates who may, each in his particular constituency, support the one article of the political creed which they are concerned in upholding."<sup>14</sup>

"With regard to the position which was assumed by the Conservative Association and by the Licensed Victuallers' Association, it is plain that the licensed victuallers occupied a very different position to that of the Conservative Association, because they had a distinct and necessarily direct interest, which made the contest one of vital consequence to them; and I do not think that their action in holding meetings to promote their own interests made them agents of the candidate."<sup>15</sup>

If candidates coalesce, the agents of the one become the agents of the other.

"It happens that in this case W. and L. have stood jointly; they have chosen to what we commonly call coalesce; they united in a canvass, and in fact have made each one agent for the other; and they have chosen to stand or fall together: consequently if any corrupt act is shown to be done by an agent appointed by one member it will affect both; such are the consequences of a coalition. A candidate is not only responsible for his own individual agent, but, having made a coalition, he becomes responsible for the acts of the agent of the other candidate with whom he has coalesced. W., therefore, as far as those matters are concerned, is exactly in the same position as L. If a corrupt act is brought home to the one, both are unable to hold their seats."<sup>16</sup>

But where candidates have coalesced, one candidate is not responsible for acts of the agents of the other candidate committed before the coalition of which he was ignorant.<sup>17</sup> It would be otherwise, however, if he had such knowledge, as in that case he would be taken to have adopted the acts.<sup>18</sup>

Where the respective agents for two candidates jointly attended to the registration, but during the election did not act in concert, it was held that there was not sufficient joint action to constitute mutual agency.<sup>19</sup>

Where the respondents had issued a canvassing card in the following terms: "B. election—The honour of your vote and interest is respectfully solicited on behalf of Mr. K. and Mr. V., the Liberal candidates," and joint accounts had been sent in to the

<sup>14</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. at pp. 97, 98.

<sup>15</sup> *Per* Pollock, B., in *Walsall* (1892), 4 O. & H. at pp. 124, 125.

<sup>16</sup> *Norfolk (Northern Division)* (1869), Judgments, 269; 1 O. & H. 240; *Nor-*

*wich* (1871), 2 O. & H. 39.

<sup>17</sup> *Malcolm v. Parry* (1875), L. R. 10 C. P. 168.

<sup>18</sup> *Ibid.* p. 176.

<sup>19</sup> *Tamworth* (1869), 1 O. & H. 83.



candidates and joint payments made on their behalf, this was considered sufficient evidence of a joint candidature.<sup>20</sup>

On the other hand, agency will not be inferred from the fact that a particular person was a partner of an agent of the candidate,<sup>21</sup> or a canvasser for an independent agency,<sup>22</sup> or a card messenger for the candidate,<sup>23</sup> or a messenger of a volunteer committee,<sup>24</sup> or the candidate's land agent,<sup>25</sup> or, in the absence of evidence that he was employed by the candidate, that he had a canvass book.<sup>26</sup> None of these things is in itself sufficient to constitute such person an agent of the candidate. Nor is a candidate liable for the corrupt act of a traitorous agent.

"If a member employs an agent, and that agent, contrary to his wish and contrary to his direction, commits a corrupt act, the sitting member is responsible for it, but where he employs an agent, and the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act it would not vacate the seat, unless it is proved that the corrupt act was at the special request of the member himself or some untainted and authorised agent of the member who directed the act to be done. . . . I say that if M. was a treacherous agent he loses the power of upsetting the seat by reason of his unauthorised acts of corruption; it would require actual proof of authority in order to make it so. It is a very different affair if a man, being an agent, has been tricked by the other party into committing a corrupt act, he himself honestly still intending to act as an agent."<sup>27</sup>

"But the rule is plain that a ratification after the act is equivalent to an authority given at the time. The rule is also plain as limited to the case in which the principal, the person sought to be made liable as principal, is acquainted with the character of the act at the time when he ratifies."<sup>28</sup>

*When does agency begin?*—"Agency is not confined," said Hawkins, J.<sup>29</sup> "within any precise and definite period, but . . . the commencement of agency must be determined in each case by the particular circumstances of each case."

"The period during which a candidate can be held responsible for the illegal and injudicious acts of his recognised supporters must be confined within reasonable limits. It would not be reasonable to say that a man who contemplates in the year 1892 becoming a candidate in the year 1896, could not legally employ a person to do

<sup>20</sup> *Bridgwater*, *ibid.* 113.

<sup>21</sup> *Mallow* (1870), 2 O. & H. 221.

<sup>22</sup> *Westminster* (1869), 1 O. & H. 89.

<sup>23</sup> *Windsor* (1869), 1 O. & H. at p. 3.

<sup>24</sup> *Stalybridge* (1869), 1 O. & H. 72;

*Bodmin*, *ibid.* 120.

<sup>25</sup> *Tamworth*, *ibid.* at p. 82.

<sup>26</sup> *Bolton* (1874), 2 O. & H. 140.

<sup>27</sup> *Per* Blackburn, J., in *Stafford* (1869), 1 O. & H. at p. 231.

<sup>28</sup> *Per* Willes, J., in *Tamworth* (1869), 1 O. & H. at pp. 80. 81.

<sup>29</sup> *Per* Hawkins, J., in *Walsall* (1892), Day's Election Cases at p. 113.

for him a variety of acts to ingratiate him with those whose votes and suffrages he intended to seek in some future year.”<sup>30</sup>

On the other hand, in the words of the same learned judge: <sup>1</sup> “I cannot think that the period of candidature or the period of agency is to be limited, either by the date of the issuing of the writ or by the day of nomination; but I think that when an election is contemplated as probable in the course of a few months, and it is well recognised that to secure the election of a particular candidate active steps must be taken and every exertion made at once to secure that object, it cannot reasonably be said that there can be no agency to take such steps, or to make such exertions, until the immediate approach of the election by the issuing of the writ.”

“Upon the present occasion, I think, the limit of time to which we ought fairly to apply our minds is a period commencing from the time when it was first known that the respondent announced his intention to present himself as a candidate for election at the next ensuing election.”<sup>1</sup>

*When does agency end?*—In the absence of any evidence to the contrary, agency ceases when the election is over,<sup>2</sup> (*i.e.*, when the result of the poll is declared<sup>3</sup>), “otherwise the consequences would follow that a perfectly honest and pure election, of which upon the return nothing whatever could be said, might be affected by an act done the following week by an indiscreet person, who having been employed in the election might make a corrupt payment. I cannot think that a corrupt payment made by a person who has been merely a member of committee or a canvasser, and made after the election, and without the privity of the member himself, could affect the member.”<sup>4</sup>

Unless the judge otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.<sup>5</sup>

In *Watford*,<sup>6</sup> however, evidence of conversation after the election had taken place was held to be inadmissible without previous proof of agency.

So, too, in *Longford*,<sup>7</sup> Fitzgerald, J., stated that he could not receive evidence of statements made twenty-six days after the election without some evidence in the first place to show that the authority of the agent continued after the election was over.

<sup>30</sup> *Per* Hawkins, J., in *Walsall* (1892), 4 O. & H. at p. 125.

<sup>1</sup> *Ibid.*

<sup>2</sup> *Per* Martin, B., in *Salford* (1869), 1 O. & H. at pp. 136–140, and *King's Lynn*, *ibid.* at p. 208.

<sup>3</sup> *Galway* (1874), 2 O. & H. 49.

<sup>4</sup> *Per* Martin, B., in *Salford* (1869),

1 O. & H. at p. 140.

<sup>5</sup> Parliamentary Elections Act, 1868, s. 17.

<sup>6</sup> (1870), 2 O. & H. at p. 3.

<sup>7</sup> *Ibid.* at p. 12; see also *Harwich* (1880), 3 O. & H. at p. 64; *Cheltenham*, *ibid.* at p. 88.

## ART. 19.—Corrupt Practice.

The expression *corrupt practice*<sup>8</sup> means any of the following offences: (a) bribery<sup>9</sup>; (b) treating<sup>10</sup>; (c) undue influence<sup>11</sup>; (d) personation, and aiding, abetting, counselling and procuring the commission of the offence of personation<sup>12</sup>; (e) making knowingly a false declaration respecting election expenses<sup>13</sup>; (f) incurring expense on account of holding public meetings or issuing advertisements, circulars, or publications, for the purpose of promoting or procuring the election without the authority of the election agent.<sup>14</sup>

NOTE.—As to the effect of a corrupt practice upon the election see Article 18, p. 62, *supra*. As to punishment, see Articles 34 and 35, pp. 200—201, *infra*. As to the distinction between a corrupt practice and an illegal practice, see p. 70, *supra*. As to when the Court has power to grant relief, see Articles 30 and 31, pp. 188—192, *infra*.

## ART. 20.—Bribery.

A person is guilty of bribery who:—(1) Directly or indirectly by himself, or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election<sup>15</sup>:

(2) Directly or indirectly by himself, or by any other person on his behalf, gives or procures or offers or promises, or promises to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election<sup>16</sup>:

(3) Directly or indirectly, by himself, or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce the return of any person to serve in Parliament, or the vote of any voter at any election.<sup>17</sup>

(4) Upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or

<sup>8</sup> Corrupt Practices Act, 1883, s. 3.

<sup>9</sup> See Article 20.

<sup>10</sup> See Article 21, p. 107, *infra*.

<sup>11</sup> See Article 22, p. 123, *infra*.

<sup>12</sup> See Article 23, p. 136, *infra*.

<sup>13</sup> See Article 24, p. 138, *infra*.

<sup>14</sup> See Article 25, p. 141, *infra*.

<sup>15</sup> Corrupt Practices Prevention Act, 1854, s. 2 (1).

<sup>16</sup> *Ibid.* s. 2 (2).

<sup>17</sup> *Ibid.* s. 2 (3).



endeavours to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.<sup>18</sup>

(5) *Advances or pays, or causes to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; but this has no application to any money paid or agreed to be paid for or on account of any legal expenses bonâ fide incurred at or concerning any election.*<sup>19</sup>

(6) **Being a Voter**, before or during any election directly or indirectly by himself, or by any other person on his behalf, receives, agrees or contracts for any money gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election.<sup>20</sup>

(7) After any election, directly or indirectly by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.<sup>21</sup>

NOTE 1.—The above definition of bribery is that which is contained in sects. 2 and 3 of the Corrupt Practices Prevention Act, 1854. Sect. 2 contains five sub-sections, each being a definition of a distinct kind of bribery in *the briber*. Sect. 3 contains two sub-sections and deals with *acceptors of bribes* (voters and other persons). The above definition of bribery is unaffected by the Act of 1883, but sect. 3 of that Act provides that the expression “corrupt practice” means, amongst other offences, bribery as above defined. Bribery is and has always been a criminal offence at common law, but the statutory definition is now so far-reaching that it includes almost every possible form of bribery. In one case, however, as has already been pointed out (see p. 63, *supra*), bribery avoids an election at common law which would not have that effect by statute, namely, where there has been general bribery, even if it could not be brought home to the candidate or his agent. Another form of bribery which does not appear to be within the statutory definition is that involved in wagers. Whenever a wager is made under such circumstances as to influence a voter in deciding for which candidate he will vote, the vote will be held bad at common law.<sup>22</sup>

<sup>18</sup> Corrupt Practices Prevention Act, 1854, s. 2 (4).

<sup>19</sup> *Ibid.* s. 2 (5).

<sup>20</sup> *Ibid.* s. 3 (1).

<sup>21</sup> *Ibid.* s. 3 (2).

<sup>22</sup> *New Windsor* (1835), K. & O. 195; *Worcester*, *ibid.* 225; cf. *Monmouth* (1835), K. & O. 416; *Youghal* (1838), F. & F. 404.

NOTE 2.—*General Bribery.* “With respect to bribery the law is perfectly clear. Bribery at common law, equally as by Act of Parliament, avoided any election at which it occurred. If there were general bribery, no matter from what fund or by what person, and although the sitting member and his agents had nothing to do with it, it would defeat an election, on the ground that it was not a proceeding pure and free as an election ought to be, but that it was corrupted and vitiated by an influence which, coming from no matter what quarter, had defeated it and shown it to be abortive.”<sup>23</sup>

“General bribery unquestionably, from whatever quarter it comes, will vitiate an election, even without proving any such connection, probably because of the propriety of acting upon the presumption that it must have been from some person so interested in the member, or so connected with his agent, that it ought to be attributed to the one or at least to the other.”<sup>24</sup>

“A man giving a vote for a member of Parliament under what the law deems undue influence gives no vote at all. This is the common law; it depends upon no statute, and it is a consequence of it that if the judge is satisfied that the votes of a considerable number of persons were corrupted and bribed, however innocent the candidate may be, and though himself unconnected with corrupt practices, his election is void by reason of the incapacity of the voters, because of general corruption, to give valid and effective votes.”<sup>25</sup>

“I take it to be well-settled law . . . that an organised system . . . of bribery . . . will invalidate an election. . . . I am speaking now of cases where nothing can be traced to a candidate or his agent, that is to say. Surely it could not be for a moment contended that, supposing in a borough of this description banks were to open their doors, to let it be understood and known that every man who voted in a certain way would receive a sum of money, that large amounts were deposited for that purpose, which you might never be able to trace to the candidate, or to one of his agents, but yet you would be able to prove that there was an organised and extensive system of bribery carried on in the borough, an election under such circumstances could be allowed to stand.”<sup>26</sup>

In *Ipswich*,<sup>27</sup> Denman, J., said:—“If one saw that bribery was so rife that there could be no further election held in the place,

<sup>23</sup> *Per* Willes, J., in *Lichfield* (1869), 1 O. & H. at p. 26.

<sup>24</sup> *Per* Willes, J., in *Tamworth* (1869), 1 O. & H. at p. 85.

<sup>25</sup> *Per* Martin, B., in *Beverley* (1869), 1 O. & H. at pp. 147, 148. See also

*Stafford* (1869), 1 O. & H. 234; *Drogheda*, *ib.* 257, 258; *Guildford*, *ib.* 15; *Bridgwater*, *ib.* 115.

<sup>26</sup> *Per* Keogh, J., in *Drogheda* (1869), 1 O. & H. 257, 258.

<sup>27</sup> (1886), 4 O. & H. 71.

then I should say the election would be avoided, subject only to this, that it would be obviously unfair to avoid the election if one found that the bribery which had been committed had not been in favour of the persons who had been elected,—there must be that qualification always,—for it would be impossible for a person who had been fairly elected to be unseated merely because his opponents had been largely guilty of bribery.”

“So far as we are aware, there has never been any judicial announcement or suggestion as to what the expression ‘extensively prevailed’ ought to be taken to include, but we cannot but think that the expression was intended by the Legislature to denote something wider and more general than the bribery, even systematised bribery, of a comparatively small class of voters.”<sup>28</sup>

NOTE 3.—Where the candidate or any agent of his has been guilty of bribery the election is rendered void.<sup>29</sup> As to what constitutes an agent see Article 18, note 5, p. 71, *supra*.

“A person can no more claim to be a member of Parliament for a place as the result of an election in which his agent has been guilty of bribery, than a person can fairly claim a prize if the person whom he employs to ride his horse, or to steer his vessel, has been guilty of foul play in the course of his employment.”<sup>30</sup>

“If it were shown that the agent of the member bribed, even without the authority and contrary to the express orders of the member, his seat was forfeited—not by way of punishment to the member, but in order to avoid the danger that would exist if persons subordinate to the candidate during an election were led away, by their desire to benefit their superior, into illegal acts, the precise extent of which it was difficult to prove, but a single one of which, if proved, it was the policy of the law to hold would have the effect of avoiding the proceeding. That a member was thus answerable for his agent at common law—his agent in the sense of conducting the election, not merely in the sense of being authorised to bribe—is perfectly clear.”<sup>1</sup>

“It seems hard at first sight,” said Keating, J., in *Norwich*,<sup>2</sup> “that a single act of bribery should avoid an election; but when an act of bribery is committed the whole election of the party bribing is tainted. It is no longer an election; it is utterly void. . . . This result may be undoubtedly a cruel consequence of the law of agency as applicable to election; it is, however, a law that arises from the necessity of the case, and is well put by a learned Scotch

<sup>28</sup> *Per* Kennedy and Channell, JJ., in *Maidstone* (1901), 5 O. & H. 153.

<sup>29</sup> *Corrupt Practices Act*, 1883, ss. 3, 5 (1), 6 (4).

<sup>30</sup> *Per* Willes, J., in *Coventry* (1869),

1 O. & H. 107.

<sup>1</sup> *Per* Willes, J., in *Lichfield* (1869),

1 O. & H. at pp. 26–27.

<sup>2</sup> (1871), 2 O. & H. at p. 41.



judge, Lord Barcaple, in the *Greenock* case,<sup>3</sup> an exposition which was approved by my brother Blackburn<sup>4</sup> afterwards. 'I do not see,' said Lord Barcaple, in the case referred to,<sup>3</sup> 'how these election petitions would be of the least use otherwise, because I suppose there are very few candidates indeed who undertake the practice of corruption by their own hand. I presume there are equally few candidates, or very nearly so, who ever say to their agents that they are to proceed corruptly in the matter.' "

As to avoiding an election on account of a single and insignificant act of bribery, Channell, B., in *Shrewsbury*,<sup>5</sup> said:—"If an act of bribery is clearly made out, and agency is clearly proved, I am disposed to agree with the dictum of my brother Willes,<sup>6</sup> even supposing it to be a little in opposition to that of my brother Martin,<sup>7</sup> and to think that a judge is not at liberty to weigh the importance of that act, or to take into consideration the effect it may have had upon the election, but he is bound to apply the express provisions of the Act of Parliament, without going into the question of the comparative insignificance of the act of bribery which has been proved to have been committed."

NOTE 4.—By sect. 2 (1) of the Corrupt Practices Act, 1854, *the inducement may be any gift or loan, &c., of money or valuable consideration.*

In order to come within the meaning of these words the gift, &c., need not be money.

In *Bodmin* <sup>8</sup> Willes, J., said that the promise of refreshment *in futuro* would be equivalent to a bribe within sect. 2 (1), if it were made out, quite apart from any question of corrupt treating, that G. offered valuable consideration to the voters in order to induce them to vote or refrain from voting.

Thus, where boots were given to electors and their relatives in order to induce such electors to vote, it was held there was a gift within the meaning of the section.<sup>9</sup>

In *Launceston*,<sup>10</sup> where the candidate had for the purpose of influencing voters at the election given to certain voters immediately before and at the election a right to trap and shoot rabbits, it was held that there was an offer within the meaning of this section, and that there was a valuable consideration, and that the candidate had been guilty of bribery. The election was accordingly declared void. "I cannot help thinking," said Mellor, J.,<sup>11</sup> "that it is a consideration which is valuable and appreciable, and that being so, I am

<sup>3</sup> (1869), 1 O. & H. at p. 251.

<sup>4</sup> *North Norfolk* (1869), 1 O. & H. at p. 240.

<sup>5</sup> (1870), 2 O. & H. at p. 37. See also Blackburn, J., in *Hastings* (1869), 1 O. & H. at pp. 218—219.

<sup>6</sup> *Blackburn* (1869), 1 O. & H. at

p. 202.

<sup>7</sup> *Salford* (1869), *ibid.* at p. 142.

<sup>8</sup> (1869), 1 O. & H. 121; and see *Kidderminster* (1874), 2 O. & H. 173.

<sup>9</sup> *Barnstaple* (1853), 2 P. R. & S. 208.

<sup>10</sup> (1874), 2 O. & H. 129.

<sup>11</sup> *Ibid.* at 133.

bound to come to the conclusion that this was a corrupt act done by the respondent himself. I cannot go into any intention of the respondent; I must be governed by what he said, and what he did, and by the inferences I ought to draw therefrom."

Again, under sect. 2 (1) the inducement may be "any agreement to make a gift or loan of money or any valuable consideration—any offer or promise to procure or endeavour to procure any money or valuable consideration—whether the offer be accepted or declined."

*Promise of a bribe.*—"It is clear and settled law as laid down by the House of Lords in the case of *Cooper v. Slade*,<sup>12</sup> recognised by Mr. Justice Willes<sup>13</sup> to be still law, that a promise to pay the travelling expenses of a voter conditionally upon his supporting a particular candidate was bribery."<sup>14</sup> "If," said Willes, J., in *Penryn*,<sup>15</sup> "the respondent had promised, it would have been as much as if he had paid."

On the other hand, a message to come and vote, sent to the voter by an agent of the candidate, is not bribery. "In *Cooper v. Slade*<sup>12</sup> Lord Bramwell, in the House of Lords, pointed out in the clearest terms that no amount of hopes or expectation on the part of a voter is enough to constitute bribery, and everyone agreed that a mere request to a voter to come up and vote could not constitute bribery."<sup>16</sup>

"Every payment of expenses, though fair and reasonable, to a voter in order to induce him to vote (that is, every payment upon any condition, express or implied, that he should be paid his expenses if he voted for a particular candidate) is bribery within the meaning of the Act."<sup>17</sup>

*Offer of a bribe.*—"Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself . . . because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another differently from what he intends it."<sup>18</sup>

"Offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation."<sup>19</sup>

<sup>12</sup> (1858), 6 H. L. C. 746.

<sup>13</sup> 1 O. & H. 29.

<sup>14</sup> *Per* Keogh, J., in *Dublin* (1869), 1 O. & H. at p. 273.

<sup>15</sup> (1869), 1 O. & H. 122.

<sup>16</sup> *Per* Willes, J., in *Coventry* (1869), 1 O. & H. at p. 105.

<sup>17</sup> *Per* Lord Wensleydale in *Cooper v. Slade* (1858), 6 H. L. C. at 791, quoted with approval by Quain, J., in

*Horsham* (1876), 3 O. & H. at 55.

<sup>18</sup> *Per* Martin, B., in *Cheltenham* (1869), 1 O. & H. pp. 64, 65; cited with approval by Harrison, J., in *Carrickfergus* (1880), 3 O. & H. at 92.

<sup>19</sup> *Per* Morris, J., in *Mallow* (1870), 2 O. & H. at p. 22; cited with approval by Harrison, J., in *Carrickfergus* (1880), 3 O. & H. at 92.

The offer of a bribe to a person disqualified from voting is bribery,<sup>20</sup> but an offer by a voter to sell his vote, unless such offer is proved to have been accepted by the candidate or his agent, does not amount to bribery.<sup>21</sup>

“Any act committed previous to an election, no matter at what distance of time, with a view to influence a voter at a coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed the day before the election or the day of the election; nay, more, if a man commits bribery on the first week of a Parliament, and if he sues for the suffrages of that constituency in the last week of the seven years which precede the dissolution, that act committed six years before can be given in evidence against him, and his seat will not hold an hour.”<sup>22</sup>

“To take an extreme case: if Mr. S. himself had said to any voter, ‘Here are £5 for you if you will promise to vote for me when I am candidate’; if he had not come forward for ten years it still would have been within the Act.”<sup>24</sup>

NOTE 5.—*In order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid.* “What is the exact meaning of the word ‘corruptly’? I am satisfied,” said Martin, B., in *Bradford*,<sup>25</sup> “that it means a thing done with an evil mind and intention, and unless there be an evil mind or an evil intention accompanying the act, it is not ‘corruptly’ done. ‘Corruptly’ means an act done by a man knowing he is doing what is wrong, and doing it with an evil object. . . . I think the meaning must be given to the word ‘corruptly’ which I have indicated, namely, a thing done with an evil mind; there must be some evil motive in it and it must be done in order to be elected.”

Corruptly—i.e., to influence votes,<sup>26</sup> “to produce the result which the Legislature intended to forbid,”<sup>27</sup> “means, contrary to the intention of this Act, with a motive or intention by means of it to produce an effect upon the election.”<sup>28</sup>

The words set out in italics above occur at the end of subsects. (1) and (2) of sect. 2 of the Corrupt Practices Act, 1854; see p. 91, *supra*.

The word “corruptly” only occurs in the definition of what constitutes bribery after the voting has taken place.

<sup>20</sup> *Guildford* (1869), 1 O. & H. 14.

<sup>21</sup> *Mallow* (1870), 2 O. & H. 21.

<sup>22</sup> *Per* Keogh, J., in *Sligo* (1869), Judgments, 144; 1 O. & H. 302.

<sup>24</sup> *Per* Bramwell, B., in *Stroud*

(No. 2) (1874), 2 O. & H. 183.

<sup>25</sup> (1869) 1 O. & H. at p. 37.

<sup>26</sup> *Cheltenham* (1869), 1 O. & H. 64.

<sup>27</sup> *Wallingford*, *ibid.* 60.

<sup>28</sup> *Hereford*, *ibid.* 195.



In *Launceston*,<sup>29</sup> Mellor, J., said: "The word 'corruptly' has been several times under the consideration of the judges, and, as far as I know, they are all agreed upon its meaning; and my brother Blackburn certainly upon two occasions<sup>30</sup> has laid down law in reference to it in terms which are exceedingly clear. He said in the *Hereford* case,<sup>1</sup> 'What is the exact meaning of the word "corruptly"?' It means, contrary to the intention of the Act, with a motive or an intention by means of it to produce an effect upon the election, not going so far as bribery, but going so far as to produce an effect upon the election.'"

In *Stroud*,<sup>2</sup> Bramwell, B., said: "The Act says 'shall corruptly do any such act.' Now, it would be impossible to find that it was corruptly done, unless there had been some previous engagement or something else to make that wrong which otherwise would be right. I rather think that word 'corruptly' would not apply to any case where the payment was merely on account of the voting, unless there was some other reason for giving the money. For instance, such a thing as this might happen: if a man voted and got turned out of his situation and went to anybody for charity, and a man said, 'I am sorry for you, here is a sovereign,' that would not be a corrupt payment, though it might be said to have been given on account of the man having voted in a particular way. Nevertheless, in almost every case where a payment is made in consequence of a voter having voted, it would be a corrupt giving, unless some reason, such as I have suggested, could be given."

*In all these cases the question is, What was the motive for doing the act? What was the governing principle? Was the act done for the purpose of inducing the voter to vote or refrain from voting, or was it done from a motive of kindness or charity—in other words, was the act done from a dishonest or honest motive?*

"Before the Court is led to the conclusion that the distribution of charity in any particular case has been used for a dishonest purpose, it must be clearly proved that the motive of the person so using it is dishonest and corrupt. Whether this is so or not must be a matter of inference to be drawn from the facts of each particular case, and must depend upon many circumstances, involving those of time, place, the persons by whom the charity is distributed, and by whom it is received; whether it has been given in pursuance of an accustomed course, or whether it is novel and unprecedented; whether it is moderate or immoderate."

<sup>29</sup> (1874), 2 O. & H. at pp. 132—133.

<sup>30</sup> *Semble*, *Wallingford* (1869), 1 O. & H. 59, and *Hereford*, *ibid.* 195.

<sup>1</sup> 1 O. & H. at p. 195.

<sup>2</sup> (1874), 2 O. & H. 184; *Cooper v. Slade* (1858), 6 H. L. C. 746.

rate in amount, and especially whether the persons to whom it is given are proper recipients."<sup>3</sup>

"It might be a doubtful question . . . whether, assuming two motives to exist, the one being pure and the other with the intention to corrupt, you could exclude the corrupt intention and rely wholly upon the pure intention. I think that must be rather a question of degree. A man may wish to be charitable in a neighbourhood, but at the same time he may have an eye to his own interests, and there must be in fact some limiting line, incapable of being defined in words, where the two things come to a nearly equal balance."<sup>4</sup>

"What are called charitable gifts may be nothing more than a specious and subtle form of bribery, a pretext adopted to veil the corrupt purpose of gaining or securing the votes of the recipients. And if this is found to be the object of the donor, it matters not under what pretext, in what form, to what person, or through whose hands the gift may be bestowed, or whether it has proved successful in gaining the desired object or not. On the other hand, a gift may really be what it professes to be, the offspring of a purely benevolent impulse, and, if this be its character, it matters not whether the recipient makes a good or bad use of it, or what its effects may be upon him."<sup>5</sup>

"A charitable gift, however injudicious it may be, is harmless in the eye of the law, whatever its effects may be upon the recipient, and certainly is not bribery."<sup>6</sup>

In *Windsor*<sup>7</sup> Bramwell, B., said: "It is certain that the coming election must have been present to the respondent's mind when he gave away these things. But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which by itself would have been an illegitimate motive. If the respondent had not been an intending candidate for the borough, and yet had done as he has done in respect of these gifts, there would have been nothing illegal in what he did, and the fact that he did intend to represent Windsor and thought good would be done to him and that he would gain popularity by this does not make that corrupt which otherwise would not be corrupt at all."

In *Carrickfergus*<sup>8</sup> Dowse, B., said: "I think the law upon this subject should be clearly understood, and I do not know that there

<sup>3</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. 94.

<sup>4</sup> *Per* Grove, J., in *Boston* (1874), 2 O. & H. 163.

<sup>5</sup> *Per* Lush, J., in *Plymouth* (1880).

<sup>3</sup> O. & H. 109, 110.

<sup>6</sup> *Ibid.* 111.

<sup>7</sup> (1874), 2 O. & H. 90.

<sup>8</sup> *Carrickfergus* (1880), 3 O. & H. 90.

is a better reading upon the point than the judgment of Baron Bramwell in the *Windsor* case.”<sup>9</sup>

On the other hand, in *Salisbury*<sup>10</sup> and *St. George's*<sup>11</sup> a different view of the law was taken. In the latter case the Court said<sup>12</sup> in reference to the observations of Bramwell, B., set out above: “We feel we should not be quite prepared to adopt so lenient a judgment, but should prefer to say . . . that in each case the question arises whether the distribution of charity was done honestly or whether it was done corruptly, and that we must take the whole of the evidence into consideration and inquire whether the governing principle in the mind of the man who made such gifts was that he was doing something with a view to corrupt the voters; or whether he was doing something which was a mere act of kindness or charity.”

The distribution of so-called charitable tickets has frequently given rise to questions in the election courts. “There are two ways,” says Pollock, B.,<sup>12</sup> in “which a candidate, or his agent, may be guilty of bribery in the distribution of charitable tickets: First, by the giving of them to individuals, coupled with a request for their vote, in which case the offence falls within the same principle as any other direct bribery which is procured by the giving of money, or anything else which is valuable to the recipient. . . .

“Another, and certainly not a less mischievous mode of bribing by the distribution of charitable tickets, is by giving them dishonestly and colourably on a large scale, and without due consideration of the need of the persons to whom they are given, so that the proper inference to be drawn from the conduct of the giver is that his motive was not that of true charity, but of corrupting the minds of the recipients and inducing them to support him in his election; and this might well be so, although there was no selection of voters only, and even if a large proportion of those to whom the tickets were given were non-voters, women and children. Indeed, such a course of conduct would amount to bribery at common law, apart from the recent statutes, and is probably more mischievous and insidious than the buying of a vote by money. It has been said of mercy that it is twice blessed—‘It blesseth him that gives, and him that takes’; but it might well be said of such charity as this that it is twice cursed, as corrupting alike the giver and receiver.”

Where it was proved<sup>13</sup> that the respondent had given £1 for a voter who previously promised him his vote, and afterwards applied

<sup>9</sup> (1874), 2 O. & H. 90.

<sup>10</sup> (1883), 4 O. & H. 28.

<sup>11</sup> (1895), 5 O. & H. 95—96.

<sup>12</sup> *Ibid.* 93.

<sup>13</sup> *Windsor* (1869), 1 O. & H. at p. 2.



to him for assistance in distress occasioned by the death of two children, Willes, J., said: "The giving of the sovereign was a question of degree. If a sovereign was sent to every person on the register, on the occasion of a birth or a death in his family, by a candidate at an election, it would be hard to come to any other conclusion than that the money was given with the view of obtaining votes. It was a very different question whether an isolated gift of the kind in a case of great distress was to be looked upon in the same light."

"If a man asks another to shout for so-and-so, and says he will give him a pot of beer for doing so, I should not consider that bribery; but if he gives him a guinea—an inordinate price for a shout—I should come to an opposite conclusion."<sup>14</sup>

The election has been declared void on the ground of bribery where the candidate or his agent had been guilty of paying money to get a voter out of prison in order to enable him to vote,<sup>15</sup> paying money to take a voter on a trip and so keep him out of the way until it was too late to vote in order to prevent his being bribed by the other side,<sup>16</sup> giving coals to voters,<sup>17</sup> giving a voter a pair of boots,<sup>18</sup> the payment of a substitute to do a voter's work while he votes.<sup>19</sup>

In *Sandwich*,<sup>20</sup> where the candidate hired a room for committee meetings in each of eighty-eight public-houses at the rate of £5 a room, and it was proved that these rooms were not used for election business at all, as committee rooms proper were hired elsewhere in which the ordinary business of the election was transacted, Lush, J., said<sup>21</sup>: "There is no difference in substance between a colourable hiring of a voter's room as a committee room and the colourable hiring of the voter himself as a messenger. The object in each case is to secure his vote. The only difference between the two cases is the form of disguise. We therefore adjudge the hiring of these rooms in the public-houses to be colourable, and to be sufficient to avoid the election."

In dealing with the decided cases it must be borne in mind that every case must depend on its particular circumstances, and must not be too readily accepted as a conclusive precedent.

"It is as well that the public should know that, when a judge pronounces an opinion upon a certain state of facts, he takes into consideration the existing state of knowledge and the existing cir-

<sup>14</sup> *Per* Pollock, B., in *St. George's Division* (1895), 5 O. & H. at p. 91.

<sup>15</sup> *Londonderry* (1869), 1 O. & H. 275, 276; *cf.* *Ashburton* (1859), W. & B. 1.

<sup>16</sup> *Duncannon*, Parliamentary Papers, No. 337, 1880, p. 38.

<sup>17</sup> *Boston* (1874), 2 O. & H. 161.

<sup>18</sup> *Teukesbury* (1880), P. P. No. 337, 1880, p. 80.

<sup>19</sup> *Plymouth* (1880), 3 O. & H. at 107.

<sup>20</sup> (1880), 3 O. & H. 158.

<sup>21</sup> 3 O. & H. at 160.

cumstances, but when upon a second occasion persons seek to avail themselves of that ruling, and think that they can do a wrong act, simply trying to keep within the particular facts which upon the former occasion were held not to be corrupt, they frequently do acts which must be held to be corrupt. It may be that, upon precisely the same apparent state of facts, an act which is not held corrupt at one time may be held corrupt at another time; because knowledge goes on, and if the second act is a mode of effecting a corrupt purpose, merely getting out of a judicial decision upon the previous state of circumstances, then that which in the first instance is not corrupt would in the second instance become corrupt. It is well that persons should know that these matters must depend upon the circumstances, and that people cannot successfully evade the law by simply, as they think, getting out of the terms which the judges use in their expositions of the law.”<sup>22</sup>

NOTE 6.—Again, the inducement may be the giving or procuring of any office, place or employment.<sup>23</sup> This is so whether the office, place or employment is in the gift of the person holding out the inducement, or is to be obtained through his means.

Thus, the offer to procure a seat in the town council for a voter was held to be within sect. 2 (2) of the Corrupt Practices Act, 1854.<sup>24</sup>

In order to ascertain whether the employment amounts to bribery or not, it is useful to inquire whether it is a case of fair work for fair pay; if so, generally speaking, there would be no bribery, but a genuine transaction. If, on the other hand, there is only nominal employment, it may well be a cloak for bribery.

In *Cambridge*,<sup>25</sup> where 74 messengers apparently connected with electors were employed on one side, and 33 on the other, and there was a conflict of evidence as the necessity of employing so many as 74, but there was no dispute that they were actually employed about the business of the election, it was held that this was not bribery.

On the other hand, in *Oxford*,<sup>26</sup> where 152 messengers were employed on one side and only 28 on the other, and it appeared that some of the 152 performed no real services, the election was avoided on account of the employment of these messengers. Where, however, about 250 men were employed as “watchers” for the alleged purpose of resisting threatened violence, and they were

<sup>22</sup> *Per* Grove, J., in *Boston* (1874),  
2 O. & H. at pp. 164, 165.

<sup>23</sup> Corrupt Practices Act, 1854,  
s. 2 (2).

<sup>24</sup> *Waterford* (1870), 2 O. & H. 25.

<sup>25</sup> (1857), W. & D. 30.

<sup>26</sup> (1880), 3 O. & H. 155.

employed by electors, to each of whom was given money to pay them, and who in many cases employed their own servants or relatives, the court nevertheless refused to treat this as colourable bribery, on the ground that there was sufficient evidence to justify the Court in regarding it as a *bond fide* engagement of persons for services which either were necessary or *were deemed* necessary.<sup>27</sup>

The mere fact, however, of nominal services being rendered, though it raises a presumption of guilty intention where the persons hired are the friends or employés of electors, is not conclusive.<sup>27</sup>

In *Penryn*<sup>28</sup> a voter applied for employment to the respondents' agent, who sent him to a person who gave him a month's work, a fortnight before and a fortnight after the election. Nothing was said about his vote until after he was told where he might go and get work; he was then asked whether he intended to vote for the respondents, to which he answered "Yes," and voted accordingly. Willes, J., held that these facts did not constitute colourable employment by the agent of the respondents, and in the course of his judgment he said<sup>29</sup>: "Unless the employment was colourable, unless, that is to say, it was an employment only in name, and it was shown that the money either was given for doing nothing or was given in excess for the services fairly rendered by the voter, there was no bribery."

In *Stroud*,<sup>30</sup> which was a case decided prior to the passing of the statute 48 & 49 Vict. c. 56, it was held that the payment of wages to workmen who were absent from their work on polling day was not bribery. Bramwell, B., said<sup>1</sup>: "The Act does not say that liberal conduct towards your men, . . . for instance, the putting up of a drinking fountain, or what not, although it may be done very much to influence voters, is an act of bribery. I do not think that it was the intention of the Legislature to prevent the doing of any act liberal and good in itself; as, for instance, if a master said to his men, 'If you choose to make a holiday of this day you shall not lose money by it; whatever your colour, go out and take your holiday, and you shall be paid your day's wages all the same.' I doubt, if there had been any antecedent promise of that kind, whether it would come within the meaning of the Act. I do not think the Legislature intended to prohibit that; it intended to prohibit acts done with the specific object of influencing the mind of the individual voter to whom they had relation by the particular temptation held out to him, but it did not intend to

<sup>27</sup> *Youghal* (1869), 1 O. & H. 291.

<sup>28</sup> (1869), 1 O. & H. 127.

<sup>29</sup> *Ibid.* 130.

<sup>30</sup> (1874), 2 O. & H. 181.

<sup>1</sup> *Ibid* at 184; cited with approval by Bruce, J., in *Haggerston* (1896), 5 O. & H. at p. 87.



prevent an act being done to a person, kind and good in itself, merely because it had a tendency to make that person favourable to the persons doing it."

In 1885 an Act<sup>2</sup> was passed laying down the conditions on which an employer may give leave of absence to his employes to enable them to vote. This Act provides that an employer may permit parliamentary electors in his employment to absent themselves from such employment for a reasonable time, for the purpose of voting at the poll at a parliamentary election, without having any deduction from their salaries or wages on account of such absence, if such permission is, so far as practicable without injury to the business of the employer, given equally to all persons alike who are at the time in his employment, and if such permission is not given with a view of inducing any person to record his vote for any particular candidate at such election, and is not refused to any person for the purpose of preventing such person from recording his vote for any particular candidate at such election.

It is bribery to employ voters as paid watchers or assistants.<sup>3</sup>

"Anyone who presumes to appoint for himself a number of persons whom he calls private police is answerable, as their master, for the misconduct of any one of them. . . . The principle to be acted upon is represented by the question 'Is the employment of these men a colourable device to cover bribery? or is it to be referred to motives and springs of action other than an intention to procure votes?'"<sup>4</sup>

On the other hand, "It is not illegal for private individuals to employ persons to keep the peace. It is a most dangerous practice, and one which ought rarely, if ever, to be resorted to."<sup>5</sup> "There can be no objection to the employment of unpaid volunteers to put down disturbances, and where any serious disorder is apprehended it may be a wise proceeding to swear in such volunteers as special constables."<sup>6</sup>

*Corrupt payment of rates.*—"Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, is guilty of bribery, and is punishable accordingly; and any

<sup>2</sup> 48 & 49 Vict. c. 56, s. 1, set out at p. 348, *infra*; and see *Aylesbury* (1886), 4 O. & H. 59.

<sup>3</sup> *Bewdley* (1869), 1 O. & H. 16; *Boston* (1889), 3 O. & H. 152, 153.

<sup>4</sup> *Per* Willes, J., in *Tamworth* (1869), 1 O. & H. 78, 79.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Per* Willes, J., in *Ipswich* (1886), 4 O. & H. at 74.

person on whose behalf and with whose privity such payment is made is also guilty of bribery, and punishable accordingly.”<sup>7</sup>

“In order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done *corruptly*—that it was done thereby to influence their votes, which . . . means to induce them to vote for the person on whose behalf the payment was made.”<sup>8</sup>

In *Oldham*<sup>9</sup> Blackburn, J., held that in order to bring a person under this provision it must be shown conclusively that the payment of rates was with a corrupt intention.

In *Wigan*<sup>10</sup> Martin, B., stated it to be his impression that to make a candidate liable for such a payment by an agent it must be shown that he expressly authorised it. This, however, seems to be contrary to and a departure from the general law of election agency, and it is respectfully submitted cannot be regarded as a correct statement of the law.

NOTE 7.—By sect. 2 (3) of the Corrupt Practices Act, 1854, a person is guilty of bribery who . . . makes any gift, loan, &c. . . . to or for any person in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament or the vote of any voter at any election.

An illustration of a case which amounts to bribery within the meaning of these words would be any payment or promise of payment to induce a person to personate a voter.

In *Lisburn*,<sup>12</sup> it was held that the payment of money to induce a person to personate his father, who was dead, and vote, was bribery. In *Coventry*,<sup>13</sup> evidence having been given as to an attempt to induce a man to personate a voter who was absent, Willes, J., remarked that it might, in his opinion, be laid in the petition that an agent of the member had got voters personated, and that that, if established, would be sufficient fraud at common law to set aside the election.

NOTE 8.—Sect. 2 (4) of the Corrupt Practices Act, 1854, makes any person guilty of bribery who, *upon or in consequence of* any such rewards or inducements—i.e., held out by an offender against sect. 2 (3)—shall procure, or engage, promise, or endeavour to procure, a return or a vote. The distinction in this case is that, whereas under the previous sub-sections the offence may be confined to one person, here there must be a corrupter, in order to make the person procuring, &c., liable.

<sup>7</sup> Representation of People Act, 1867, s. 49 (England); Representation of People (Scotland) Act, 1868, s. 49.

<sup>8</sup> *Per* Martin, B., in *Cheltenham* (1869), 1 O. & H. 63.

<sup>9</sup> (1869), 1 O. & H. 164.

<sup>10</sup> (1869), 1 O. & H. 190.

<sup>12</sup> (1863), W. & B. 225.

<sup>13</sup> (1869), 1 O. & H. 105.

In *Barnstaple*,<sup>14</sup> the sitting member entered into the following agreement with one C.: "I will pay £400 and £1,000 within a week after the election." C. had been very active in a commission of inquiry held for the borough and in preventing its disfranchisement, and had incurred expenses to the amount of £1,400 in so doing; it was in respect of the payment of this £1,400 that the above agreement was made. C. swore that it was no part of the understanding that he should endeavour to procure L.'s return; but it was held that the election was void.

The fair payment, however, by one candidate of the expenses of another if he will stand along with him does not of itself constitute an illegality under the provisions of sect. 2, although it constitutes a case calling for a full inquiry. In the words of Willes, J.<sup>15</sup>: "If the respondent had agreed to give the respondent H. £5—I might say a farthing in point of law—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which H. had with the electors of Coventry, and of advancing E.'s influence as a candidate at the election, it would have been bribery, and it would have avoided the election."

NOTE 9.—The fifth and last kind of bribery, described by sect. 2 (5) of the Corrupt Practices Act, 1854, is committed—first, by one who advances or pays, or causes to be paid, any money to or for the use of any other person, 'with the intent' that the money is to be spent in 'bribery at an election'; or, secondly, by one who knowingly pays, or causes to be paid, any money to any person in discharge, or repayment, of money spent wholly, or in part, in 'bribery at an election.' Both these offences are confined to bribery *at an election*; both relate to general bribery without reference to particular voters; and in both the corrupt *intention* must be shown. No person, therefore, who subscribes money for the expenses of an approaching election, within the amount which may legitimately be anticipated in the particular case, will be within this section, unless independent evidence be given of his intention to be a party to bribery at such election.<sup>16</sup>

NOTE 10.—At the end of sect. 2 (5) of the Corrupt Practices Act, 1854, there is a proviso which excepts from the definition of bribery in sect. 2 any money paid or agreed to be paid for or on account of any expenses which are *bonâ fide* incurred at or concerning any election and which are not illegal on some other ground<sup>18</sup>

<sup>14</sup> (1855), 2 P. R. & D. 336.

<sup>15</sup> *Coventry* (1869), 1 O. & H. 97.

<sup>16</sup> See *Britt v. Robinson* (1870), L. R. 5 C. P. 503.

<sup>18</sup> *Per* Watson and Bramwell, BB., in *Cooper v. Slade* (1858), 6 H. L. C. 764, 766.



## ART. 21.—Treating.

*Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, shall be guilty of treating.*<sup>19</sup>

*And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision shall also be guilty of treating.*<sup>20</sup>

NOTE 1.—The definition of treating given in the above Article is that contained in sect. 1 of the Corrupt and Illegal Practices Prevention Act, 1883. The punishment for this offence is dealt with in sect. 6 of the same Act. Under the preceding Corrupt Practices Act of 1854, candidates only were liable to punishment for treating.

General treating, though it could not be brought home to the candidate or his agent, always rendered the election void at common law.

“ I take it to be well settled law . . . that an organised system . . . of treating will invalidate an election . . . I am speaking now of cases of which nothing could be traced to a candidate or his agent; but supposing at the head of every street food and drink were provided in large quantities, and places for eating and places for drinking opened, as to which it was known that every voter who wished to go thither and seek for food or for drink would receive it, provided he was a voter upon the side of a particular candidate, and that that was an organised system of debauching the voters of a particular borough, although all the while not traceable to the member or his agents so as to disqualify him at future elections, is it to be supposed for a moment that such an organised system as that would not defeat an election? I take it that it is well settled that it would do so, and that there is no possibility of contesting that proposition.”<sup>21</sup>

“ If it could be proved that there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it, by the common law such election would be void, because it would be carried on contrary to the principle of the law.”<sup>22</sup>

<sup>19</sup> Corrupt Practices Act 1883, s. 1.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Per* Keogh, J., in *Drogheda*

(1869), 1 O. & H. at pp. 257, 258.

<sup>22</sup> *Per* Martin, B., in *Bradford*, *ibid.*

at p. 41.

Upon the same principles as are laid down above, it was held in *St. Ives* <sup>23</sup> that the election was void on the ground of general treating, although neither the candidate nor his agent was in any way responsible for it.

As to what amounts to general treating—

“ Any act of treating tending to interfere with the free exercise of the franchise was always considered as a corrupt and illegal act at common law ” <sup>24</sup> :

“ In order to find general treating, you ought to find that in all probability an effect has been produced upon a considerable number of minds ” <sup>25</sup> :

“ The charge of general treating is ridiculous. . . . The giving of ten gallons or so of beer in a constituency of 2,600 people, even if it were given for the purpose of influencing their vote, cannot be general treating. . . . ” <sup>26</sup> :

“ Any act of treating tending to interfere with the free exercise of the franchise was always considered a corrupt and illegal act at common law. But it has never been considered necessarily a corrupt thing for persons interested in particular subjects to invite other persons to a discussion relating to the subject, even though some entertainment may be provided. It would, we think, be to impose restrictions upon the advocacy of many public questions which the Legislature never intended to be imposed, if it were to be held that a temperance meeting or a meeting to advocate the admission of women to the franchise, or a meeting for the disestablishment of the Church in Wales, at which tea or other refreshments were provided, was to be considered as a corrupt act, simply because the effect of the meeting might be to give force and strength to an agitation in favour of a political measure to carry out the views of the promoters of the meeting ” <sup>27</sup>

NOTE 2.—*Any person who corruptly . . . for the purpose of corruptly influencing.* In order to amount to treating a corrupt intention must be proved.

In *North Norfolk* <sup>28</sup> Blackburn, J., said: “ The word ‘ corruptly ’ means ‘ with the object and intention of doing that thing which the statute intended to forbid. ’ ”

“ When that eating and drinking take the form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes *corrupt*, and is forbidden by the statute. Until that arrives, the mere fact

<sup>23</sup> (1760), 2 Douglas, 416.

<sup>24</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. at p. 99.

<sup>25</sup> *Per* Cave, J., in *Hexham* (1892), Con. Elect. Judgm. at p. 8.

<sup>26</sup> *Per* Cave, J., in *Pontefract* (1893), Day's Election Cases, at p. 129.

<sup>27</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. at p. 99.

<sup>28</sup> (1869), 1 O. & H. 242.

of eating and drinking, even with the connection which this supper had with politics, is not sufficient to make out treating." <sup>29</sup>

"If the opening (of the case) had been proved to the extent of a single pot of liquor being supplied to a single voter by any proved agent of the member under circumstances in which I could be satisfied that it was intended thereby to gain the vote of that man, this election must have been declared void." <sup>30</sup>

As regards the meaning of the word "corruptly," the decisions of the election court as to the construction to be placed on the same word in the corresponding section (sect. 4, now repealed) of the Corrupt Practices Act, 1854, are in point.<sup>1</sup>

"As to this word 'corruptly' the true construction of the Act is that which was stated by Mr. Justice Willes in giving his opinion in the House of Lords in the case *Cooper v. Slade*,<sup>2</sup> namely, that 'corruptly' there does not mean wickedly or immorally or dishonestly, or anything of that sort, but with the object and intention of doing that which the Legislature plainly means to forbid. In fact giving meat or drink is treating when the person who gives it has an intention of treating, not otherwise; and in all cases where there is any evidence to show that meat or drink has been given, it is a question of fact for the judge whether the intention was made out by the evidence which in every individual case must stand upon its own ground; and although each individual case may be a mere feather's weight by itself, and so small that no one would act upon it, yet if there is a large number of such cases, a large number of slight cases will together make a strong one, and consequently it must always be a very important inquiry what was the scale, the amount, and the extent to which it was done. In considering what is corrupt treating and what is not, we must look broadly to the common sense of the thing. There is an old legal maxim "*Inter apices juris summa injuria*." To go by the strict letter of the law often would produce very grave wrong. If we were to say that an election was void upon a single case of that sort, we should be going to the *apices juris*, and the result would be *summa injuria*. Therefore the inquiry must be as to the extent and amount of such cases." <sup>3</sup>

"I cannot doubt," said Blackburn, J., in *Wallingford*,<sup>4</sup> "that the intention of the Legislature in construing the word 'corruptly' was to make it a question of intention, which must be ascertained, as all questions of intention must, by looking at the outward acts of the parties and seeing the degrees and extent, and then drawing

<sup>29</sup> *Coventry* (1869), 1 O. & H. 106.

<sup>30</sup> *Tamworth* (1869), Con. Judg. See also *Bradford*, *ibid*.

<sup>1</sup> (1871), 2 O. & H. 43.

<sup>2</sup> (1858), 6 H. L. C. 746.

<sup>3</sup> *Per* Blackburn, J., in *Bewdley* (1869), 1 O. & H. 19, 20.

<sup>4</sup> (1869), 1 O. & H. 58, 59.



the conclusion from the facts; a conclusion which may be, to a certain extent, doubtful, when we are considering what were the intentions. I think that what the Legislature means by the word 'corruptly' for the purpose of influencing a vote, is this: that whenever a candidate is, either by himself or by his agents, in any way accessory to providing meat, drink, or entertainment, for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever, also, the intention is by such means to gain popularity and thereby to affect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and therefore provide it in order to affect the election—when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think that it is corrupt treating.<sup>5</sup> But everything is involved in the question of intention, and it becomes important to see what is the amount of the treating. The statute does not say or mean that it shall depend upon the amount of drink. The smallest quantity given with the intention will avoid the election. But when we are considering, as a matter of fact, the evidence, to see whether a sign of that intention does exist, we must, as a matter of common sense, see on what scale and to what extent it is done. No one would think it reasonable to draw the conclusion from the mere giving of a thimbleful of drink (to use a strong expression), that it was done with any intent to influence the election so as to bring it within the statute. It is equally certain in the case of a person giving a large number of thimblefuls one would draw the conclusion that there was such an intention. But it must always be a question more or less of evidence, and the inference which the court draws from the facts must to some extent depend upon the peculiar views of the minds which have to draw the inference, and there must, therefore, always be a certain measure of doubt in that respect. But I take it there is no doubt that the point to be considered is, Was it given with an intention to influence the election?"

If a publican supplies drink to voters without orders and the candidate subsequently pays him, such ratification would probably be equivalent to original treating.<sup>6</sup>

"The question of corrupt treating must . . . be in each case a question of fact. If the refreshments provided were excessive, if the occasions were numerous, and if there were other circumstances

<sup>5</sup> This passage was cited with approval by Morris, J., in *Mallow* (1870), 2 O. & H. at 22, 23.

<sup>6</sup> *Per* Willes, J., in evidence before the Select Committee on Parl. and Mun. Elections, 445.

calculated to excite suspicion, a corrupt intention might be inferred." <sup>7</sup>

"The question whether or not there is corrupt giving of meat and drink must, like every other question of intention, depend upon what was done, and to a great extent to the extent to which it was done, the manner and way. And therefore it is a question which must always be more or less a question of fact." <sup>8</sup>

On the question whether a particular candidate was liable personally for treating, Cave, J., said <sup>9</sup>:—

"If the candidate was *bonâ fide* ignorant of what had taken place, then I think he would not be personally liable for that treating. But, on the other hand, if he was ignorant *malâ fide*, he would be. I do not think that mere carelessness is sufficient, unless it is of so gross a character as to compel the conclusion that the ignorance is *malâ fide*—that is to say, that the respondent suspected that something was wrong, and chose wilfully to shut his eyes in order that he might be able to say at some future time that he did not actually know what was going on."

Wills, J., in *Montgomery* <sup>10</sup> said:—

"There is inherent in a great many people with whom we have had to deal in this inquiry the habit of giving and accepting drink, and to suppose that such habit would be dropped at election time is preposterous. In the excitement of election times you must expect to find more indulgence in such habits rather than less. It is therefore not sufficient, in order to make out a case of treating, to show that this kind of refreshment has taken place. We must be careful to see that the treating is administered for the purpose of influencing votes."

"The law deals with substance, and not with shadows. The law allows those trivial matters which occur from time to time and cannot be prevented, which really do no mischief except in the minds of the suspicious, and no inference is to be drawn against a person who simply eats or drinks in the way of moderate refreshment. . . . That which might present attraction to one man which he could not resist may to another be possible to avoid. A hungry creature will go into the trap for a bait at which the well-fed one will turn up his nose with disdain. But it must be obvious (I have said enough and I meant no more by what I said than to introduce what really is at the bottom of the decision in all these cases) that the judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way that he ought to impute to the person who has done it a

<sup>7</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. 99, 100.

<sup>8</sup> *Per* Blackburn, J., in *Staleybridge* (1869), 1 O. & H. 72.

<sup>9</sup> In *Hexham* (1892), 4 O. & H. 147, 149.

<sup>10</sup> (1892), *Day's Election Cases* at p. 150.

criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's generosity, or his profusion, or his desire to express his good will to those who honestly help his cause, without resorting to the illegal means of attracting voters by means of an appeal to their appetite." <sup>11</sup>

In *Westbury* <sup>12</sup> Willes, J., said:—

"I do not wish it to be supposed (as has been supposed by some people from some expression of mine in another case) that treating by a single glass of beer would not be treating if it were really given to induce a man to vote or not to vote. All I have ever said is that that is not sufficient to bring my mind to the conclusion that the intention existed to influence a man's vote by so small a quantity of liquor."

In *Tamworth* <sup>13</sup> the same learned judge said: "Treating, to be corrupt, must be treating under circumstances and in a manner that the person who treated used meat or drink with a corrupt mind, that is, with a view to induce people by the pampering of their appetite to vote or abstain from voting, and in so doing to act otherwise than they would have done without the inducement of meat or drink. It is not the law that eating and drinking are to cease during an election." <sup>14</sup>

In *Wigan* <sup>15</sup> Bowen, J., explained the law in the following striking passage:—

"Can one close one's eyes to this fact, in connection with this last Wigan election, that it took place at a time of great distress in the town, when large numbers of colliers were on strike, and when the gift of a breakfast to a starving man was worth as much to him on that morning as the gift of a pound would have been perhaps at a more prosperous time? In the answer to the question that a cup of coffee or a piece of bread and cheese was no such pampering of the appetite as constitutes electoral treating, I desire to point out that a cup of water to a soldier who is perishing for water on the battlefield would be worth all the worth of the cup in gold and more. You must not measure the treat by the actual thing which is given. Water or bread in itself may appear little matter, but you must take into consideration the time at which and the circumstances in which it is given. Now on this day hunger was abroad in the streets of Wigan.

"In the second place, I wish to answer the suggestion that this was merely charity; charity in election times ought to be kept by politicians in the background. . . . It will generally be found that

<sup>11</sup> *Per* Willes, J., in *Bodmin* (1869), 1 O. & H. at p. 125, quoted with approval by Dowse, B., in *Louth* (1880), 3 O. & H. at 169, 170.

<sup>12</sup> (1869), 1 O. & H. 50.

<sup>13</sup> (1869), 1 O. & H. 82, 83.

<sup>14</sup> See also *King's Lynn*, 6 O. & H. 179, at pp. 181—2, 191, 192.

<sup>15</sup> (1881), 4 O. & H. 13, 14.



the feeling which distributes relief to the poor at election time, though those who are the distributors may not be aware of it, is really not charity, but party feeling following in the steps of charity, wearing the dress of charity, and mimicking her gait."

"*Primâ facie*, as has been often pointed out, the mere exercise of hospitality is not an offence, but if that guise of hospitality is made use of for the purpose which in the mind of the Legislature is corrupt, for the purpose of inducing a man to vote otherwise than he would vote, either to vote in favour of the person who engages his feelings by giving him a handsome treat, or to refrain from voting for a man who would not do it, the Legislature has said by express enactments, independently of the question of bribery, that that is an offence."<sup>16</sup>

"Eating and drinking must go no, notwithstanding election coming, in the ordinary and usual course. When eating and drinking takes the form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes corrupt and is forbidden by the statute. Until that arrives the mere fact of eating and drinking, even with the connection which the supper had with politics, is not sufficient to make out corrupt treating."<sup>17</sup>

"I have found," said Blackburn, J., in *North Norfolk*,<sup>18</sup> "that the notion has prevailed that for a candidate to give anything in the way of meat or drink was fatal to the election. That is a salutary notion, and acts as a protective machinery to the candidate, but I cannot lay down the law to the full extent to which that goes. But I can say, whenever a candidate or agent gives any meat or drink he does what is a foolish and imprudent thing, because it becomes a question what the intention was in doing such a thing, and if the judge who tries the case finds that the intention was to influence and affect voters it vacates the election."

"In my judgment," said Cave, J., in *Norwich*,<sup>19</sup> "the statute does not apply to that form of treating which exists occasionally between social equals, where first the one treats and then the other treats, and which is only one form of ordinary hospitality. Neither does it apply to certain kinds of treating which exist in relation to business matters; it is not at all uncommon for persons, when they have struck a bargain, to cement it with a little drink, and it is obvious that the treating referred to in sect. 1 of the Act has no reference to treating of that sort. It applies, in my judgment, to that sort of treating which exists where the superior treats his inferior, the treating which gives the treater influence over the

<sup>16</sup> *Per* Field, J., in *Barrow-in-Furness* (1886), 4 O. & H. at p. 79.

<sup>17</sup> *Per* Willes, J., in *Coventry* (1869),

1 O. & H. 106, 107.

<sup>18</sup> (1869), 1 O. & H. 243, 244.

<sup>19</sup> (1886), 4 O. & H. 91.

person treated, and secures for the former the good will of the latter. Not, however, to all cases of this kind does the corrupt treating spoken of in the Act apply: it does not apply where the treating is in return for small services, as where a man may treat a railway guard or porter, or he may treat his own servants; nor does it apply where the object is to acquire general good will. It must have reference to some election, and it must be for the purpose of influencing the vote of the person treated. What the object is in each particular case must depend upon the circumstances of the case."

The act must be done in order to induce any voter to vote or abstain from voting; whether this intention is present will be a matter of inference from all the evidence in each particular case.<sup>20</sup>

In *Bradford* (No. 1),<sup>21</sup> where 115 public-houses were opened ostensibly as committee rooms, in which refreshments were supplied, and it was proved that voters were admitted to those committee rooms, that the farce was gone through of putting down their names as committee-men, that, their names being so put down, refreshments were furnished to them whether they were voters or non-voters or messengers, Martin, B., held that there was a corrupt intention, and that this was a case of treating. On the other hand, in *Bradford* (No. 2),<sup>22</sup> it was held that there was no case of treating where refreshments were provided for committee-men and others engaged in promoting an election, who had declared their intention of supporting a particular candidate.

"In treating," however, "it is not necessary that the person treated should belong to the opposite party . . . if you give drink to a man with the intention of confirming his vote and of keeping up the party zeal of those believed to be supporting your candidate, then that is corrupt treating."<sup>23</sup>

*Political clubs and associations.*—Difficult questions arise where meetings are held for the purpose of exciting political enthusiasm, and some sort of refreshment is provided for persons attending the meetings. Does the giving of this refreshment amount to treating within the Act? Whether this is so or not must depend on the particular facts of each case, but it is material to consider the form and amount of the refreshment, the persons who are the recipients of it, whether similar refreshment has been customary, and whether the meeting has been avowedly held in support of the particular candidate or merely for general political discussion.

In dealing with this question in, *Rochester*<sup>24</sup> Vaughan Williams, J., said:—

<sup>20</sup> *Per* Bramwell, B., in *Stroud* (1874), 2 O. & H. 184.

<sup>21</sup> (1869), 1 O. & H. 33.

<sup>22</sup> (1869), 1 O. & H. 39; see also

*Carrickfergus*, *ibid.* 268.

<sup>23</sup> *Per* Lawrance, J., in *Bodmin* (1906), 5 O. & H. 231.

<sup>24</sup> (1892), 4 O. & H. at p. 157.



"If people are called together for the purpose of exciting their political enthusiasm, and if the so-called treating is a mere incident of such a gathering, it is not an offence within the Act. It does not make it corrupt treating that a roof or warmth is provided for the meeting, nor is it necessarily corrupt treating if the persons attending the meeting are provided with some sort of refreshment; but if they are gathered together merely to gratify their appetites, and so to influence their votes, then it is treating within the Act."

"Now there is, of course, nothing to be said in the abstract against associations for the promotion of either Conservative or Liberal views. People have a right to associate together in order to persuade their fellow countrymen to adopt those views of politics which they themselves are persuaded are the best and most wholesome, and so long as in doing that they resort solely to things that are likely to produce an effect upon the reason of those to whom they are addressed, no fault whatever can be found with their action: it is only when they endeavour to go beyond that, and to acquire popularity for political principles of a particular kind by endeavouring to secure the adhesion of those voters who take a less strong view of political matters by addressing themselves, not to their reason, but to less praiseworthy methods, by giving them treats or entertainments for the purpose, by those means, of inducing those who take but little interest in politics, for the sake of what they may get by those treats and picnics, to join one or other of the great political parties into which the country is divided, that fault is to be found.

"No doubt, so long as the local associations confined themselves to their own members and did not tout for subscriptions for such a purpose—if they united in order that by means of uniting they might be able to form a social gathering—I should see nothing wrong in that; but undoubtedly it is somewhat dangerous, because it is so easy to pass from that to something which is objectionable, and where a local organisation has got up a social fête and there happens to be a loss upon it, there is then the temptation to other people to subscribe and make good that loss, which, if the treat is one involving the giving of meat and drink at a less price than it can be furnished at by those engaged in furnishing it, comes very perilously near to treating, and cannot be too strongly deprecated."<sup>25</sup>

*Ingratiation by hospitality.*—"It may be doubted whether treating in the sense of ingratiation by mere hospitality, even to the extent of profusion, was struck at by common law. . . . In order to prove treating, it must be shown, not merely that eating and drinking went on during the election, and went on under the eyes of the candidate (eating and drinking must always go on),

<sup>25</sup> *Per Cave, J., in Hexham (1892), 4 O. & H. 145, 146.*



but it must be shown that the eating and drinking was supplied at the expense or upon the credit of the candidate, either by his authority or by the authority of one or more of his agents, in order to influence voters." <sup>26</sup>

"No man is bound to abstain from harmless hospitalities (especially if they are, so far as he is concerned, customary) because an election is pending. . . . But the regular practice of giving drinks to the persons present at the meetings of the National Conservative League stands upon a very different ground—it is objectionable, demoralising, and dangerous to the seat." <sup>27</sup>

"Primrose League and other associations . . . unhappily seem to make a practice of giving entertainments, picnics, suppers, teas, sports, and what-not, a practice which is dangerously akin to corrupt treating, and a practice which, if indulged in by a candidate, would certainly amount to corrupt treating. . . . In my opinion the candidate has not fully performed his duties who has failed to take all reasonable means that those whom he appointed his agents have not been, and shall not be, guilty of corrupt or illegal practices." <sup>28</sup>

"There is undoubtedly no harm in political associations so long as they confine themselves to legitimate ends—the danger of them is that they are liable to be diverted towards illegitimate means; and undoubtedly it would be a wise plan, as soon as a candidate has been fixed upon, for these associations to suspend their operations until after the election is over, and entirely abstain as an association from taking any part in collecting any money, incurring any expense, or paying any account, during the whole time that the active candidature is going forward." <sup>29</sup>

"*At Homes*" and *Garden Parties*.—In *Great Yarmouth* <sup>30</sup> it was proved that three months before the election the respondent, assisted by his wife and daughters, gave an "At Home" at the Town Hall, Great Yarmouth. The party lasted from 4 to 7 p.m., and 787 persons attended in response to invitations published in the newspapers and on handbills. Sir J. C., the retiring member for the borough, in whose honour the party had been to a great extent arranged, was present, but there were no political or other speeches. A band played, and there was also singing. Tea and other refreshments were provided, and twenty-one bottles of whisky and three of brandy were consumed. Some evidence was given as to persons becoming intoxicated at the party, but this was contradicted. The cost of the party was entirely defrayed by the respondent.

<sup>26</sup> *Per* Willes, J., in *Lichfield* (1869),  
1 O. & H. 24—25, 26.

<sup>27</sup> *Per* Wills, J., in *Worcester*  
(1892). *Day's Election Cases*, 88.

<sup>28</sup> *Per* Vaughan Williams, J., in

*Hexham*, 4 O. & H. at pp. 150, 151.

<sup>29</sup> *Per* Cave, J., in *Rochester* (1892),  
4 O. & H. 160.

<sup>30</sup> (1906), 5 O. & H. 195.

As to this, Channell, J., said<sup>1</sup>: "The charge of treating at the Town Hall is a serious one, and a difficult question to decide. . . .

"Now, one object of that meeting was to enable Sir J. C. to see his friends, but it was also to get for the respondent the benefit of Sir J.'s popularity. . . .

"It comes within what I have mentioned before, expenses for the purpose of getting personal popularity, illegal if corrupt. Therefore, one has to consider whether or not that amounted to corrupt treating, and I confess that it is a question of very great difficulty. If the result of this election depended upon it, I think that I should have required a little more time for considering whether or not it comes within the express terms of the Act of Parliament, because it must be remembered that 'corrupt' means doing the thing which the Legislature forbids, and the question is whether the Legislature has forbidden it. Treating has been defined as getting at voters through their mouths and through their stomachs, supplying them with food and giving them drink; and upon the whole, although it was a rash thing to do, I do not think that this case is made out. I think that the food and drink that were given were quite subsidiary to the main object of the entertainment, which was to get the idea to prevail that the respondent was a good fellow, who would welcome and would talk with people in all classes of life just as Sir J. C. had done, as well as to give Sir J. C. the opportunity of meeting and seeing these people, though I do not consider that to be so important. Then, if the refreshment was subsidiary to that I do not think that it was corrupt treating; I do not think that it was intended to get votes directly by giving a cup of tea or a slice of bread and butter to begin with, which is what the wife of the respondent ordered. But the refreshment contractor thought it necessary to bring down whisky, or, I think he said that it was so much a matter of course that his manager brought it down without even asking him. Then the matter is put to the respondent 'all in a hurry,' as he said, and he said to the contractor, 'Well, if it is usual you had better do it,' and so there it was. On the whole, although I have considerable doubt about it, I do not think that I ought to impute to him an intention to get votes by giving those people glasses of whisky. The object was to get popularity, and to show that he would be the same to all classes of society, and incidentally these refreshments were included. . . .

"The question is what was the intention with which that entertainment was given; and if I felt bound to come to the conclusion that it was with the intention of getting votes 'through the mouths and stomachs,' as it has been said, of the people who drank the

<sup>1</sup> (1906), 5 O. & H. 195, 196, 197.

whisky and tea and ate the bread and butter, then I should be obliged to hold that it was corrupt treating within the meaning of the Act of Parliament. It was a risky thing to do, it was very near the line, but because I hold that the main object of the entertainment was a different one I am able to come to the conclusion that there was no corrupt treating."

In the result the Court held the respondent duly elected and dismissed the petition.

In *Bodmin*<sup>2</sup> it was given in evidence that at a time when the election was reasonably supposed to be imminent, a large garden party was given at L——, the seat of the respondent's parents, Lord and Lady C. The party was stated to be given under the auspices of "the Cornish Branch of the Liberal Social Council." The object of the Council was to promote entertainments in support of Liberal principles, but although a Cornish committee, under the presidency of Lord C., had been in existence for some time, nothing had been done by it before or since the party. Invitations were sent to a large number of persons, and advertisements were published requesting anyone omitted to apply for a ticket. Among those invited were persons some of whom were shown to be Conservatives and some not to have declared themselves on either side. Over 4,000 persons attended the party, at which tea and various entertainments were provided. A political meeting was also held, at which respondent, Lord C., and a Mr. M. spoke. Mr. M. had acted as the respondent's election agent until the month preceding the election, and had so described himself. The arrangements were in the hands of Mr. M., and Lord C. defrayed all the expenses, amounting to about £170.

Grantham, J., said<sup>3</sup>: "I regard the L——. garden party as a very extraordinary proceeding. After all the election petitions in which the question of treating has been considered, it passes my comprehension how on the eve of the election anyone could have suggested to or allowed the father and mother of the candidate to give an entertainment on a lavish scale in support of their son's candidature. . . .

"No one who has heard the history of the garden party can doubt for a moment that it was corrupt treating. It was held for the purpose of affecting the election and as a means of gaining popularity for the candidate. It was entirely managed by Mr. M., who sent out all the invitations, and invited persons who were not in any sense Lady C.'s friends."

Lawrance, J., said<sup>4</sup>: "In regard to the garden party I have nothing to say against the Liberal Social Council as such, but it

<sup>2</sup> (1906), 5 O. & H. 232.

<sup>3</sup> *Ibid.* 233.

<sup>4</sup> *Ibid.* 234.



would have been illegal for the Primrose League or any other political association to give a garden party at a time when an election was believed to be imminent."

The Court declared the election void.

*Smoking Concerts.*—"Smoking concerts . . . are not necessarily corrupt. What takes place there is not necessarily corrupt treating, but it has a tendency to foster among certain people the expectation that joining that association will secure them free meat or free drink to an extent which they would not be able to get in any other way. In that way they are dangerous; they tend to foster that kind of feeling which may easily degenerate into corrupt treating."<sup>3</sup>

"I agree with what has been said by Mr. Justice Vaughan Williams in the *Hexham* case (4 O. & H. at p. 150), that the practice of political associations giving entertainments is a practice dangerously akin to corrupt treating. . . . The practice which was proved in the present case, of the chairman for the time being at smoking concerts and at other social gatherings paying for a glass of beer for those present at the commencement of the concert or meeting, is, I think, a very objectionable practice, but I cannot in the circumstances of the present case say that the observance of the custom by persons who from time to time acted as chairmen of smoking concerts was a treating, with the intention to influence votes, by persons for whose acts Colonel F. ought to be held responsible."<sup>4</sup>

Finally, to sum up the matter in the language of Vaughan Williams, J., in *Rochester*<sup>5</sup>:—

"Every candidate who wishes honestly to prevent the commission of corrupt and illegal practices will, from the moment he becomes a candidate, make up his mind that he will have nothing to do with any political club or association which makes it part of its business to provide meat, drink, and entertainment for the persons who are interested in the cause."

*Distinction between political and non-political societies.*—It should be noticed that the election judges, following the decisions of parliamentary election committees, have drawn a distinction between societies which have, and those which have not, a political object.

Thus, in *Windsor*,<sup>6</sup> a question arose as to treating the members of an Oddfellows Society.

It was proved that the Oddfellows Society consisted for the most part of artisans. The annual dinner was held at the "Crown" Tavern on August 25, the respondent being in the chair, and

<sup>3</sup> Per Cave, J., in *Rochester* (1892).  
Day's Elec. Cases, p. 101.

<sup>4</sup> Per Bruce, J., in *Lancaster* (1896),  
5 O. & H. 43, 44.

<sup>5</sup> (1892), Day's Election Cases, at  
p. 105.

<sup>6</sup> (1869), 1 O. & H. 1.

ninety-five members present. The usual course on such occasions was that those present should each pay his own score. The chairman, however, occasionally paid for the wine which was supplied. On this occasion four or five dozens of champagne were drunk. The wine was placed on the table by the landlord at the respondent's request. Each guest had paid half-a-crown for his dinner: £27 10s. were set down to the account of the respondent, Mr. Jones, the vice-chairman, and Mr. Mason, for champagne, sherry, and cigars. A considerable number of persons present at the dinner were voters for Windsor, of all shades of political opinion.

In the course of his judgment<sup>7</sup> Willes, J., said: "The Odd-fellows is not a political society. Its constitution is of a benevolent character and party politics are as a rule excluded from it, as from other societies of a similar description. The sting of this case lies in the fact that the dinner was held on August 25, within a fortnight or three weeks of the commencement of the actual canvass for the election. Now I am impressed with the objectionable character, to say the least of it, of any transaction by which an intended candidate may seek to ingratiate himself with electors, whether of his own side of politics or not, by profuse expenditure for luxuries. I must express the opinion, for I entertain it, that this is a questionable proceeding, and that it would be well if such proceedings were refrained from in future. . . . Cases of a similar nature have, I find, been under consideration of parliamentary committees, who have drawn a distinction between societies which have and those which have not, a political object. I may refer to the decision in the *Pontefract* case (Wolferstan & Dew, p. 71) as bearing upon this point. The treating of Oddfellows mentioned in that case was to a much smaller extent than in the present instance, but it was held not to amount to treating within this Act, the society not being a political society. I may also refer to the *Maidstone* case (Wolferstan & Dew, p. 104) as bearing immediately upon this point, as showing that it appears to have been taken for granted, and no doubt correctly, that a similar treating of a society having a political character, if established in evidence, would have amounted to an offence within the Act of Parliament. I am not bound by decisions of parliamentary committees, but I may properly refer to those decisions for my guidance. As to the case of the Oddfellows, then, while I cannot, for reasons that I have mentioned, disabuse my mind of its importance, yet I think it well to follow the course which has been adopted by parliamentary committees in similar instances."

<sup>7</sup> (1869), 1 O. & H. 4, 5.

*School feast.*—Giving a school feast is not necessarily treating.

“Undoubtedly it is proved that the candidate did give refreshments in the shape of food and entertainment to a very large number of persons. Everybody agrees that there were something like from 7,000 to 10,000 people present, who came from all round the neighbourhood, no doubt principally from the division. *Primâ facie* that calls for some answer. It was a very large entertainment, and was given at a time when a person giving it would have in his mind that a great many of the persons who would be likely to come there would be persons who would exercise the franchise, and whose votes he would be glad to have. But then all the reported decisions show that you must take into consideration all the circumstances of the case. On the other side it is said that this was not a political association, and was not an unusual thing. It is clearly and satisfactorily proved to my mind that this so-called school treat has been an entertainment given by the respondent on the Waddesdon estate, at all events for the last five or six years, though this year it was larger than usual. It appears that all the schools in the district were invited, and everybody knows that all over England it is the habit of some person or other, generally the gentry in the neighbourhood, to open their parks for the purpose of giving some entertainment of this kind. It is a thing very much done, and is very generally known. Of course, it may be made a vehicle for political corruption, and then it is as bad as any other mode of corruption. But it has been satisfactorily established in this case that no more was done than had been done in previous years.”<sup>8</sup>

*Employment of watchers.*—In *Bewdley*<sup>9</sup> Blackburn, J., dealt with this question. “The employment of watchers,” he said, “comes within all the mischief of treating. In the first place, it indirectly influences the men, whether voters or not; if they are not voters, it indirectly influences all their friends and other voters. In the second place, when it is given to voters, it would in all human probability lead to an expenditure by them in public-houses and elsewhere, which would indirectly influence voters. In that way it falls within all the mischief of treating, but no statute has yet been passed rendering it of the same effect as treating.” The learned judge subsequently said that he considered this to be a corrupt practice, and that as such he must report it to the Speaker.

*Candidate speaking at public-house.*—“A case of treating is not proved by merely showing that a candidate went to a public-house to address a meeting where drinking was going on, unless it is proved that the drinking was more than might be expected to take place at a house where people meet together. It does not appear

<sup>8</sup> *Per Field, J.* in *Aylesbury* (1886), 4 O. & H. 63, 64.      <sup>9</sup> (1869), 1 O. & H. 20.



to me that that would be sufficient to bring my mind to the conclusion that necessarily the candidate paid for the drink that was there supplied. The case of treating is not made out unless it is shown that an extraordinary amount of drink was consumed which could not have been paid for by the persons there.”<sup>10</sup>

“Drunkenness, in the way of general drunkenness, with a view to influencing the election, according to my reading, would be drunkenness operating upon men at or near the time when you wanted them to come up to the poll to give you votes.”<sup>11</sup>

It is a most dangerous practice to use public-houses for canvassing purposes. As to this, in *Tamworth*,<sup>12</sup> Willes, J., said:—

“Organising canvasses at public-houses I call a dangerous practice, for two reasons. First, because persons who are not voters at all, who have no interest in either party, and who only care to swig at other people’s expense wherever they think that drink is going gratuitously, go round to such meetings, and are allowed to go in under the mistaken notion that they are voters on legitimate business with the committee, or out of good nature not liking to object to them. The candidate is thus exposed to a number of persons of that sort dropping in and drinking what they do not pay for, and then making a great show of it when the trial comes. . . . The second reason is because committee-men who are employed, and who it has been assumed may be supplied with refreshments, never ought to be. If committee-men are allowed to have drink, it is sure to lead to excess. . . . There is also a third reason, and that is with regard to the landlords themselves. The landlord being called upon to lend his room for the purpose of holding meetings there, and having, it may be implied, authority to provide fair refreshment to the committee during their labour (which could hardly have the name of treating affixed to it unless it were excessive), takes upon himself, without any orders at all, and upon the chance of being paid by the candidate if he should turn out to be successful, to allow a long score to be run up for other refreshments in addition to what he has been authorised to supply.”

*Treating after an election.*—In order to make treating after the election corrupt it would appear that it must have been in pursuance of a previous understanding.

In *Brecon*<sup>13</sup> Lush, J., said:—

“I am therefore driven to the conclusion that the treating which the Act calls corrupt as regards a bygone election must be connected

<sup>10</sup> Per Willes, J., in *Lichfield* (1869), 1 O. & H. at pp. 24, 25.

<sup>11</sup> Per Willes, J., in *Tamworth* (1869), 1 O. & H. at 86.

<sup>12</sup> *Ibid.* at pp. 87, 88.

<sup>13</sup> (1871), 2 O. & H. 45; approved by Grove, J., in *Poole* (1874), 2 O. & H. 125; cf. *Kidderminster* (1874), 2 O. & H. 170.

with something which preceded the election, must be the complement of something done or existing before, and calculated to influence the voter while the vote was in his power. An invitation given before to an entertainment to take place afterwards, or even a promise to invite, or a practice of giving entertainments after an election, which it may be supposed the voters would calculate on, would, if followed up by the treat afterwards, give it the character of corrupt treating. But when the entertainment was, as it is proved in this case to have been, not only not mentioned, but not even thought of till after the election was over, no such entertainment ever having been given before, it cannot, in my judgment, be deemed corrupt treating, within the meaning of the Act, even if its object was, as my brother Ballantine contends, to gain a hold upon the voters and secure their future support."

It has been held that where a man has been returned and immediately begins to feast the population of his constituency, that is a corrupt practice extending to the next election.<sup>14</sup>

Evidence of what has passed before the dissolution is permissible.<sup>15</sup>

*A promise to treat.*—It has been held that a promise to treat is a charge which requires an answer.<sup>16</sup>

*Treating of non-electors.*—"The treating of non-electors may be illegal and corrupt, just as much as the treating of voters."<sup>17</sup> Thus, in *Tamworth*,<sup>18</sup> Willes, J., in dealing with the case of some women who had been treated by the respondent's agent, said: "The question was, Were they treated in order that they might influence their fathers, brothers, or sweethearts? If so, this would be unquestionably corrupt treating, and would avoid the election."

#### ART. 22.—Undue Influence.

*Every person is guilty of undue influence who directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence, or restraint, or inflicts, or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss, upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who, by abduction, duress, or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any elector either to give or refrain from giving his vote at any election.*<sup>19</sup>

<sup>14</sup> Per Willes, J., in *Montgomery* (1892), 4 O. & H. 168.

<sup>15</sup> *Ibid.* per Pollock, B.

<sup>16</sup> *Montgomery* (1892), 4 O. & H. 169.

<sup>17</sup> Per Fitzgerald, J., in *Longford* (1870), 2 O. & H. 15.

<sup>18</sup> (1869), 1 O. & H. 86.

<sup>19</sup> Corrupt Practices Act, 1883, s. 2.

NOTE 1.—The definition given above is that contained in sect. 2 of the Corrupt and Illegal Practices Act, 1883. Apart, however, from statute, if it could be shown that by reason of undue influence there had not been freedom of election, the election would be set aside—in other words, undue influence, if it was so extensive as to prevent a true election, would at common law render the election void, and this is so even though it could not be proved that the candidate or any agent of his was responsible for such influence.

“What was the effect of undue influence before the statute is the effect still, and . . . such influence prevailing generally is sufficient to avoid the election, without any proof of agency whatever.”<sup>20</sup>

“In order to avoid an election on the ground of . . . undue influence, either it must be shown that the rioting or violence was instigated by the member or his agents for whom he is responsible, or it must be shown that it was to such an extent as to prevent the election being an entirely free election.”<sup>21</sup>

It is, of course, only *undue* influence which is illegal.

“The law cannot strike at the existence of influence. The law can no more take away from a man, who has property or who can give employment, the insensible but powerful influence he has over those whom, if he has a heart, he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates.”<sup>22</sup>

The undue influence may take various forms. It may consist, for instance, of general riot and violence, threats, or spiritual intimidation.

In *North Durham*,<sup>23</sup> to quote the words of Bramwell, B., who tried the case: “It was proved that one of the committee rooms was wrecked, that the police station was stormed and the prisoners liberated, that the vicar’s house and other houses were attacked, that savage violence was used . . . that a number of men were ill-treated, and that a conveyance was flung over the cliffs.” In delivering judgment, Bramwell, B., said:—

“I take it that the law is this. First of all, there is the statutory intimidation, that contemplated by the statute, if one may use such an expression, that is, an intimidation contemplated by the statute

<sup>20</sup> *Per* O’Brien, J., in *South Meath* (1892), 4 O. & H. at 132.

<sup>21</sup> *Per* Blackburn, J., in *Staleybridge* (1869), 1 O. & H. 72; see also *Salford*

(1869), 1 O. & H. 140.

<sup>22</sup> *Per* Willes, J., in *Lichfield* (1869), 1 O. & H. 28.

<sup>23</sup> (1874), 2 O. & H. 160.



which avoids the seat, where a candidate or his agent is guilty of it. But besides that there is another intimidation that has been called a common law intimidation, and it applies to a case where the intimidation is of such a character, so general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency.”<sup>23</sup>

“Where intimidation happens to such an extent as not to let the election be free, though not traced to the agent, it will make the election void. . . . In considering whether an election was free or not it would be necessary to see what was the positive majority.”<sup>24</sup>

In *Drogheda*<sup>25</sup> Keogh, J., said:—

“To put general intimidation upon a parallel with general bribery or general treating, it must be shown to spread over such an extent of ground, and to permeate through the community to such an extent, that the tribunal considering the case is satisfied, if it be so, that freedom of election has ceased to exist in consequence. If that be the case, I, for my part, see no distinction between an organised system of bribery, an organised system of treating, and an organised system of intimidation.”

“Before an election can be vitiated by reason of general riot and violence, it must be shown to be such as to affect the freedom of election, which is that every person who has the franchise ought to be at liberty to go, and have the means of going, to the poll and giving his vote, without obstruction, and without fear of intimidation. To set aside an election on the ground of general riot and violence, it must be established that persons possessing the ordinary nerve and courage of men have been prevented from going to the poll to record their votes.”<sup>26</sup>

“No doubt if rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the common law, for the common law provides that an election should be free, in the sense that all persons shall have an opportunity of coming to the poll and voting without fear or molestation. But for this purpose it must be a rioting to an extent certainly to deter a man of ordinary reasonable nerve from going to the poll.”<sup>27</sup>

In *Dudley*<sup>28</sup> Grove, J., said:—

“Of course, one would not set aside an election for any trifling disturbance which may take place, as it sometimes does, good-

<sup>23</sup> (1874), 2 O. & H. 156. This case and that of *Drogheda* (1869), 1 O. & H. 259, were referred to by Field, J., in *Thornbury* (1886), 4 O. & H. at p. 67, as the two leading cases on the subject of common law intimidation and riot.

<sup>24</sup> Per Blackburn, J., in *Stafford*

(1869), 1 O. & H. at 229.

<sup>25</sup> (1869), 1 O. & H. 259.

<sup>26</sup> Per Martin, B., in *Salford* (1869), 1 O. & H. 140, 141.

<sup>27</sup> Per Martin, B., in *Nottingham* (1869), 1 O. & H. 246.

<sup>28</sup> (1874), 2 O. & H. 120, 121.

naturally, at an election, without any real hindrance or impediment to the voting. What I have to look at is whether there was such a substantial riot and tumult as prevented any large number of the electors from voting. . . . An election is supposed to be the voluntary voting of the people, and if the state of the things in the town is such that that cannot be properly exercised, there cannot be said to be an election."

"If the evidence affected this return, it seems to me that it would affect it by reason of the common law, which, of itself, renders an election carried by violence, or force, or intimidation, void, because the freedom of election is violated, and persons are prevented from freely exercising their franchise and giving their votes."<sup>30</sup>

In *Dublin*<sup>1</sup> Keogh, J., said:—"General bribery or general treating will invalidate an election, even although it be not directly traceable to the candidate, and I say above all things that general intimidation and undue influence, whether it is lay or ecclesiastical, whether it is the ecclesiastic of one persuasion or the ecclesiastic of another, whether it is the Protestant Episcopalian minister or the Roman Catholic priest, or the minister of any other of those innumerable sects which I believe are to be found existing all over the face of the world, will upset every election at which it is practised."

And in a later case,<sup>2</sup> after citing what he had said on the subject of general intimidation in the *Dublin* case, continued:—

"That I believe to be the law as laid down by the greatest authorities, and of that I believe no happier exposition was ever given than in the celebrated argument of Sir Samuel Romilly in the case of *Huguenin v. Baseley*.<sup>3</sup> I adopt his words as marking what I conceive to be the limit between due and undue influence. They were as follows: 'Undue influence will be used if ecclesiastics make use of their power to excite superstitious fears or pious hopes, to inspire, as the objects may be best promoted, despair or confidence' (that is, to inspire despair or confidence in order to attain their own objects, be they what they may), 'to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness—that good or evil which is never to end.'"

And in the same case the same learned judge said:—<sup>4</sup>

"If a single elector, the most miserable freeman that crawls

<sup>30</sup> *Per* Martin, B., in *Cheltenham* (1869), 1 O. & H. 64.

<sup>1</sup> (1869), 1 O. & H. 273.

<sup>2</sup> *Per* Keogh, J., in *Galway (Borough)* (1869), 1 O. & H. 305; see also the observations of the same learned judge

in *Galway (County)* (1872), 2 O. & H. 56, 57.

<sup>3</sup> 14 Ves. 288.

<sup>4</sup> *Galway (Borough)* (1869), Judgments, 347.

about this town, had been refused the rites of the Churches in order to compel him to vote, or because he had voted, or because a member of his family had voted in a particular way, I would have avoided this election without the slightest hesitation."

In *Longford*<sup>5</sup> the law regarding spiritual intimidation was thus laid down:—

"The Catholic priest has, and he ought to have, great influence. His position, his sacred character, his superior education, and the identity of his interests with his flock ensure it to him; and that influence receives tenfold force from the conviction of his people that it is generally exercised for their benefit.

"In the proper exercise of that influence on electors, the priest may counsel, advise, recommend, and entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition of those whom he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or disadvantage, or punishment hereafter. He must not, for instance, threaten to ex-communicate, or to withhold the Sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter. If he does so with a view to influence a voter, or to affect an election, the law considers him guilty of undue influence."

In *South Meath*<sup>6</sup> O'Brien, J., said, referring to this passage:—

"The rule of law as laid down by Mr. Justice Fitzgerald (the late Lord Fitzgerald) in the *Longford* case (2 O. & H. 6) is in substance this—that it is the undoubted right of the clergy to canvass and induce persons to vote in a particular way, but that it is not lawful to declare it to be a sin to vote in a different manner or to threaten to refuse the Sacraments to a person for so doing."

"A priest's true influence ought to be like a landlord's true influence, springing from the same sources, mutual respect and regard, sympathy for trouble or losses, sound advice, generous assistance, and kind remonstrance. And where these exist, a priest can exercise his just influence without denunciation, and the landlord can use his just influence without threat or violence. A priest is entitled, as well as any other subject, to have his political opinions, and to exercise his legitimate influence legitimately. It is a mistake to suppose that on a man taking holy orders he ceases to be a citizen, or ceases to be clothed with all the privileges and rights of a citizen. But a priest has no privilege to violate or abuse

<sup>5</sup> (1870), 2 O. & H. 16.

<sup>6</sup> (1892), 4 O. & H. at 132.



the law; he has no right to interfere with the rights and privileges of other subjects. He may exercise his own privilege, but he must forbear in respect of others.”<sup>7</sup>

It is the undoubted right of the clergy to speak in favour of a candidate to his congregation,<sup>8</sup> to attend a meeting held for the purpose of choosing a candidate,<sup>9</sup> and to use every legal means to try to induce other voters to accept his own political views.<sup>10</sup>

On a question of how far a meeting composed exclusively of Roman Catholic clergy of the county was evidence of spiritual intimidation, Fitzgerald, J., said<sup>11</sup>: “All I have to do is to pronounce upon the legality of it, and I am obliged to say that, however objectionable it may have been, it was a lawful proceeding. . . . The objections to it are that it separates the clergy from the laity; it exposes the former to the imputation of what is called ‘clerical dictation.’ It creates jealousy and uneasiness, and lays the foundation for the charge of undue influence; and there is this quite certain, that it calls upon the judge who may have to determine the validity of the election to view with suspicion, and criticise with vigilance, the course which the clergy may take in the contest.”

Where general undue influence can be proved, it is unnecessary to go further and prove that the result of the election was in fact affected thereby.

In *Drogheda*,<sup>12</sup> it was argued that where the respondent polled an actual majority of the registered electors, the election could not be avoided on the ground that the electors were prevented from polling by a mob, inasmuch as if they had all polled the result must have been the same. This contention, however, failed. Keogh, J., said:—

“Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining tenth should be able to record their votes and to express their opinions.”

In the words of Andrews, J., in *South Meath*<sup>13</sup>: “It is a mistake to suppose that where general undue influence exists, it must be further shown that the result of the election was, in fact, affected thereby. It is enough to show such general undue influence as may be reasonably believed to have affected the result.<sup>13</sup> . . .” And again, in *North Meath*<sup>14</sup>: “I do not agree that undue spiritual influence is, in point of law, subject to exactly the same considera-

<sup>7</sup> *Per* Hughes, B., in *Tipperary* (1870), 2 O. & H. at 31, 32.

<sup>8</sup> *Galway* (1869), 1 O. & H. 307.

<sup>9</sup> (1870), 2 O. & H. 14.

<sup>10</sup> *Tipperary* (1870), 2 O. & H. 31.

<sup>11</sup> In *Longford* (1870), 2 O. & H. at p. 14.

<sup>12</sup> (1869), 1 O. & H. 254.

<sup>13</sup> (1892), 4 O. & H. 141, 142.

<sup>14</sup> *Ibid.* 188.

tion as undue influence by physical violence. The former is a much more subtle form of influence, and its full effect is much more difficult to estimate. I think it clear, that if it has prevailed so generally that the result of the election may be reasonably believed to have been affected thereby, the court cannot be called on, before avoiding the election, to determine, as a matter of fact, that if this influence had not existed the result of the election would have been different. From the very nature of the influence in question this could scarcely ever have been done, and, in my opinion, even in the case of undue physical influence of a wide-spread and general character, no such doctrine applies. In the *North Durham*<sup>15</sup> case, Bramwell, B., speaking of common law intimidation, said that it applied to a case where the intimidation was of such a character, so general and extensive in its operations, that it cannot be said that the polling was a fair representation of the opinion of the constituency; and a little further on in his judgment he said: 'Where it is of such a general character that the result may have been affected, in my judgment it is no part of the duty of a judge to enter into a kind of scrutiny to see whether possibly, or probably even, or as a matter of conclusion upon the evidence, if that intimidation had not existed the results would have been different.' "

NOTE 2.—The definition of undue influence contained in sect. 2 of the Corrupt and Illegal Practices Act, 1883, and which is set out in Article 22, p. 123, above, was substituted for that contained in sect. 5 of the Corrupt Practices Act, 1854, which was repealed by the Act of 1883. It differs only from the repealed section in the addition of the words "temporal or spiritual" before the word "injury" and the omission of the words "in any other manner practise intimidation," and "otherwise interfere with the franchise of any voter."

*Makes use of, or threatens to make use of, any force, violence, or restraint.*—In *North Norfolk*,<sup>16</sup> on the question of undue influence, Blackburn, J., after quoting sect. 5 of the Act of 1854, said: "I feel no doubt that where a person, in order to prevent another from voting or to force him to vote, either beats him or threatens injury to his person, or his house, or the like, that is undue influence; but I do not think it is confined to that. Where such a thing is done and brought home to the agent, according to my view it avoids the election."

"It is clear," said the same learned judge, in *Strafford*,<sup>17</sup> "that whenever intimidation is brought home to the agent it would upset

<sup>15</sup> (1874), 2 O. & H. 156.

<sup>16</sup> (1869), 1 O. & H. 240.

<sup>17</sup> P. P. (1869), 120, p. 297.

the election, however slight the intimidation might be, provided it be intimidation." It will also avoid the election, although the voter has not, in fact, been intimidated.<sup>18</sup>

*Or inflict any . . . temporal or spiritual injury, damage, harm, or loss.*—These words include cases where the act complained of is not in itself wrongful, but which comes within the section by reason of its being done in order to induce or compel the voter to vote or refrain from voting, or on account of such person having voted or refrained from voting. Thus they include the case of a landlord giving his tenant notice to quit, or a master by due notice dismissing his servant, provided that it be proved that, in the one case, the tenancy, and, in the other, the service, was terminated on account of the tenant or servant having voted in a particular way.

In *North Norfolk*,<sup>19</sup> Blackburn, J., thus explained the law:—

"Harm or loss within the meaning of the section is not confined to cases where the injury was a wrongful or violent injury. It would apply to cases where, though a person has a perfect right to do it if he does not do it with the motive of affecting the vote, yet the doing of it does inflict harm upon the other side. . . . Where a tenant holds his land from year to year, and the landlord can at any time give six months' notice to quit, the landlord has a perfect right to choose his tenant, and turn him out; but if the landlord threatens to inflict, or does inflict, that turning out of his tenant for his vote, that is inflicting harm or loss within the meaning of the Act; and I think that sort of thing was intended to be struck at by the statute. So, where a person employs a servant, and the servant is continuing in his employment, and would in all probability continue so in the ordinary course of things, the master may dismiss him at pleasure, giving him proper notice, and commits no wrong in doing so; but if he does it on account of the vote and for the purpose of coercing the voter, the statute intends, I think, to make that an infliction of loss which was to be punished.

"In the *Westbury*<sup>20</sup> case, where it was proved that a manufacturer had exercised coercion on a large scale in order to force his workpeople to vote, it was held, properly, that it was an infliction of damage or loss which, being proved to be done by an agent, vacated the seat. In the *Blackburn*<sup>21</sup> and *Oldham*<sup>22</sup> cases it was rightly held that though the loss and harm to be done to a man is not an illegal harm—not a matter that would be a crime, like treating a man or destroying his property—yet if it be a loss inflicted for the purpose of affecting the vote, it is brought within the statute.

"Coming now to what may be called *precarious loss*. Suppose

<sup>18</sup> *Northallerton* (1869), 1 O. & H. 173.

<sup>19</sup> (1869), 1 O. & H. 240—242.

<sup>20</sup> (1869), 1 O. & H. 50.

<sup>21</sup> (1869), 1 O. & H. 204.

<sup>22</sup> (1869), 1 O. & H. 161.



the case of a person who is in the habit, at intervals, of frequenting a shop and giving the tradesman some custom—if he chose no longer to give that custom, but to go elsewhere, if he chose to threaten to take away that custom, and go elsewhere, is that a loss or not? I think if the loss proposed to be inflicted that way were to such an extent and in such a way as would seriously affect the saleable value of the goodwill of the man's business, it would clearly be a loss. The matter must be weighed as a question of degree. It is not to be forgotten that the section enacts that the offence shall be a misdemeanour. It must be remembered, in construing the statute, that it is intended that such an infliction of loss, or such a threatening of infliction of loss, must be so serious that one could direct a jury in a criminal court to find that a person was guilty of misdemeanour."

Speaking then of mere threats as distinguished from actual loss, the learned judge said <sup>22</sup>:—

"Where an injury has been actually inflicted, the proof is comparatively easy, but where merely a threat has been made, or what is supposed to be a threat, and not acted upon, the point is more difficult to determine. The question would be one of fact. Was this a serious and deliberate threat, meant to affect the vote (though perhaps repented of and not afterwards acted upon), or merely angry words not meaning anything? When it comes to be a case of what may be called precarious benefit arising from being a customer or the like, the matter should be made out to such an extent that you might direct a jury upon an indictment to find the prisoner guilty. The maxim 'De minimis non curat lex' applies to a considerable extent, and in seeing whether there is undue influence from a threat of some loss, you should see whether the loss is really considerable or not, and that the loss is not what a lawyer would call too remote."

As to dismissal, partly on political and partly on other grounds, Willes, J., in *Blackburn*,<sup>23</sup> said:—

"Another question arises as to the dismissal of workmen by their masters immediately before a parliamentary election, and that is this: Where an employer has a mixed motive for dismissing his man, where he has a reason for getting rid of him apart from his politics, is the employer bound, in point of law, to abstain from getting rid of him merely because of the general election coming on? Well, I think that in point of law, as an abstract question, he is not bound to abstain. But I think any sensible man or sound lawyer advising him would say, 'You may do so; but take care how you do so, because, unless you prove clearly that you have a

<sup>22</sup> *North Norfolk* (1869), 1 O. & H. 242.

<sup>23</sup> (1869), 1 O. & H. 204, 205.

good ground for discharging your servant apart from the political one, it is inevitable that your discharge of him will be imputed to your dislike, not of the man himself, but of his politics.' "

In the last-mentioned case,<sup>23</sup> where shortly before the election workmen were in some instances threatened with discharge and in others actually discharged, it was held on the evidence before the Court that there had been undue influence, and the election was consequently declared void.

The landlord, like the clergyman, is entitled to make legitimate use of his influence. "I say it is right and becoming," said Keogh, J.,<sup>24</sup> "that a landlord should use his influence with his tenants. As long as he does not exercise that influence in an illegitimate manner, no steadier, or safer, or more legitimate influence can be used."

As regards the presence of landlords in the polling stations, Fitzgerald, B.,<sup>25</sup> in *Down*, said: "I entertain grave doubts whether this assemblage of landlords at the places where the actual polling of their tenants takes place is either prudent or proper."

*Or threaten.*—Threats of "injury, damage, harm or loss," if operative at the time of the election,<sup>26</sup> have the same effect as the use of force, violence or restraint, or the actual infliction of such injury, &c. "Unless you can show that the . . . threat is one the force of which is in existence, continuing till the time of the election; although the . . . threat which has been . . . made may have subjected the parties to penalties, it is not a . . . threat which will avoid the election."<sup>27</sup>

A threat by a landlord to turn a tenant out of his house is intimidation.<sup>27</sup>

Under the corresponding section,<sup>28</sup> now repealed, it was held,<sup>29</sup> that a threat of dismissal of workmen was intimidation. Willes, J.,<sup>30</sup> said: "It was suggested that some of the workmen left voluntarily. Though in one sense they may have gone voluntarily, they did not go willingly, any more than a man acts willingly when he voluntarily takes to a small boat in the middle of the ocean when his ship is on fire. There was a compulsion upon these men which they could not resist. . . . A man who is sent out to live upon the charity of his fellow workmen, or to go to the workhouse with his family, unless he does a particular thing, is intimidated. . . . The words (of sect. 5) are large enough to include every sort of intimidation, every sort of conduct which would operate upon the mind of another, and terrify or alarm him into doing what the person misconducting himself willed, against his own free will."

<sup>23</sup> *Blackburn* (1869), 1 O. & H. 198.

<sup>24</sup> *Galway (Borough)* (1869), 1 O. & H. 306.

<sup>25</sup> *Parl. Papers*, 260 (1880), p. 12.

<sup>26</sup> *Windsor* (1874), 2 O. & H. 91.

<sup>27</sup> *Per Bramwell, B., ibid.* 92.

<sup>28</sup> See Note 2. p. 129. *supra*.

<sup>29</sup> *Westbury* (1869), 1 O. & H. 47.

<sup>30</sup> *Ibid.* at pp. 51, 52.

It is intimidation within the statute to threaten to give up a pew in a Nonconformist chapel unless the minister will vote in a particular way.<sup>1</sup>

“A mere attempt on the part of an agent to intimidate a voter, even though it were unsuccessful, would avoid an election.”<sup>2</sup>

*Spiritual injury.*—These words did not appear in the corresponding sect. 2 of the Act of 1854. As has been said, however, it was held that independently of statute the election was avoided by undue influence of this kind, apart from any question of whether the candidate or any agent of his were responsible for it. In dealing with this question of spiritual influence at an election, O’Brien, J., said in *South Meath*<sup>3</sup>:—

“The effect of such influence at all was broadly challenged at the Bar, but whatever might be the view taken at one time of the question of the right of the State to step into the domain of human conscience, and to say that a person should not be influenced who had himself the power of resisting the influence, we must take the law to be settled by the decisions in this country, the principle of which is adopted into the express terms of the statute in making the threat or infliction of spiritual injury undue influence such as will void an election, although there was not, before the *Longford*<sup>4</sup> and the *Galway*<sup>5</sup> cases, any trace to be found in the common law of England of any rule other than to leave merely moral agencies to moral correction. Other occasions and facts differing from those which exist in the present case may render it necessary to consider, at a future time, whether the terms of the statute themselves involve the revision in one respect of the rules laid down in the *Longford*<sup>4</sup> case by making injury not benefit, punishment not reward, that which is the subject of fear instead of hope, alone undue influence. The real principle is not that of intimidation in the proper sense, because the intimidation in the spiritual relation assumes to be for the benefit of the person intimidated; but it is that of undue influence, which by the common law is allowed to avoid all private acts, and by the rule in the *Longford*<sup>4</sup> case—and now by the terms of the statute—is applied to the public act of the exercise of the franchise. And I consider it to be a necessary position of the law that what was the effect of undue influence before the statute is the effect still, and that such influence prevailing generally is sufficient to avoid the election without any proof of agency whatever, and that the object of the statute was merely to bring spiritual means into the category of such influence.”

“It is a mistake,” said Andrews, J., in a later case,<sup>6</sup> “to suppose

<sup>1</sup> *Per* Willes, J., in *Northallerton* (1869), 1 O. & H. 168.

<sup>2</sup> *Ibid.* 173.

<sup>3</sup> (1892), 4 O. & H. 131, 132.

<sup>4</sup> (1870), 2 O. & H. 6.

<sup>5</sup> (1869), 1 O. & H. 303.

<sup>6</sup> *South Meath* (1892), 4 O. & H. at 142.



that, if such undue influence as consists of the infliction or threat of temporal or spiritual injury is proved to have been committed, it is necessary to prove that any person was in fact thereby prevented from freely exercising his franchise. This class of undue influence is dealt with by the first branch of the 2nd section of the Act of 1883, and it is the use or threat of it in order to affect votes which constitutes the offence. It is only in the cases referred to in the second branch of that section—namely, abduction, duress, or any fraudulent device or contrivance—that it is necessary to prove, or enable the court to infer from the evidence, that an elector was thereby impeded or prevented in the free exercise of his franchise.”

*Abduction.*—As has been pointed out, the first part of the section covers cases of abduction, where force or violence has been used. Cases of abduction without force or violence are covered by the latter part of the section. Thus, in *Lichfield*,<sup>6</sup> where voters were kept out of the way by the devices of an agent of the candidate until it was too late for them to vote, this was held to be a case of abduction within the statute.

*Fraudulent device or contrivance.*—In *Gloucester*<sup>7</sup> it was admitted by the respondent's party that they issued cards to a large number of voters, similar in shape and appearance to ballot papers, and having a mark on them put opposite to the name of the respondent. It was stated on the cards that if any voter marked his ballot paper otherwise than in the way in which the card was marked, his vote would be invalidated. It was contended on the part of the petitioners that the issuing of cards like this was an attempt to obtain votes by a fraudulent device, and that it was a contravention of sect. 5 of the Corrupt Practices Prevention Act, 1854.

Blackburn, J., decided upon the facts that it was not made out that the parties issuing the cards had the fraudulent intention imputed.

In *Down*<sup>8</sup> it was proved that one of the principal agents of the respondent stated publicly, on several occasions just before the election, that he had discovered a plan by means of which he would be able to ascertain after the election how each elector had voted; in fact, that the Ballot Act was a farce. It was also proved that the agent in question ordered at the expense of the respondents, and distributed in the constituency, 10,000 copies of a newspaper containing an account of an interview with the agent, in which it was stated that he had in the presence of eight persons conclusively established his position.

It was submitted on behalf of the petitioners that this was a

<sup>6</sup> (1880), P. P. 278, 1880; 3 O. & H. 136.

<sup>7</sup> (1873), 2 O. & H. 60—61.

<sup>8</sup> (1880), 3 O. & H. 122.

fraudulent device within the Act. The learned judges differed, and the election was therefore allowed to stand.

In *Stepney*<sup>9</sup> it was proved that, a short time before the polling day, the election agent had caused to be printed, and sent to every voter, a card about eight inches long by four inches wide. These cards were coloured yellow, and were headed 'Polling day, &c., from 8 a.m. to 9.0 p.m. at the ' (here followed the polling station of the voter to whom the card was sent, and the name and number on the register of that voter). Then followed the words, 'To secure the return of Mr. T., poll early and mark your voting paper as below.' Then followed a diagram which might be fairly described as a copy of the ballot paper, subject only to this, that 'D.' was printed in very small type, and 'T.' in very large type with a cross against it. Immediately under this diagram were the words, 'Be careful not to sign your voting-paper nor make any other mark except the cross as shown above, or your vote will be lost,' the words 'nor make any other mark' and 'vote will be lost' being in conspicuous capital letters, the rest of the paragraph in small type. The card contained two other paragraphs, one to the effect that it would save time to take the card to the poll, and the other requesting that the card might be delivered to Mr. T.'s agent at the door of the polling station or at the committee room. As to these 'yellow cards,' Denman, J., said<sup>10</sup> in his judgment:—

"Was the circulation of such a document as the yellow card of itself sufficient to disqualify the petitioner—as having been an act 'deliberately done by his election agent, in order to trick voters into the belief that their votes would be thrown away if they voted for the respondent? . . . I do not think that it could be held upon the true construction of sect. 2 that, in the absence of any proof that any one or more voters had been prevented or impeded in the free exercise of the franchise by the perusal of such cards, the mere sending of them with the intent that they should have that effect could rightly be held to amount to the offence of undue influence within that section. . . . I am unable, therefore, to hold that the distribution of these yellow cards, in the absence of any evidence that anyone was in fact deceived by them, was an act (however objectionable and discreditable to the party who circulated them) which deprives the petitioner of a right to sit for the division in case any vacancy should occur during the present Parliament."

It should be noticed, as was pointed out by Denman, J., in *Stepney*,<sup>11</sup> that "the section deals with two classes of misconduct, the first consisting of using or threatening to use force &c., or inflicting or threatening to inflict injury, &c., in order (that is to say, with the intent) to induce an elector to vote or refrain from

<sup>9</sup> (1886), 4 O. & H. 55.

<sup>10</sup> *Ibid.* 56.

<sup>11</sup> (1886), 4 O. & H. at 57.

voting; the second consisting of the successfully impeding or preventing the free exercise of the franchise of any elector by abduction, duress, or any fraudulent device or contrivance; and that, as regards the latter class of misconduct, there must be proof that some elector or electors had been actually impeded or prevented before it can be held that an offence has been committed."

#### ART. 23.—Personation.

*A person is guilty of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.*<sup>11</sup>

NOTE 1.—It has been seen that an election will be set aside at common law on the ground of general bribery, general treating, or general undue influence, even though it cannot be traced to the candidate or any agent of his, but there is no such law in regard to general personation. This question was discussed in *Belfast*<sup>12</sup>; and Dowse, B., in delivering the judgment of the court, said<sup>13</sup>:—

"It has been said, and evidence has been given on that basis, that if the personation was general in its nature it might unseat the member, irrespective of any agency at all. With that view we admitted some evidence in the early part of the case, but it is now perfectly apparent that nothing of the kind can be maintained. It would be impossible, even if such were the law, that thirteen cases of personation out of a constituency of over 8,000, and where there were upwards of 3,500 who voted for the successful candidate, could be said to so infect the whole constituency as to make the election void at common law. But I find no authority that the election would be void at common law in such a case as this. I do find one of the judges<sup>14</sup> laying down that an election may be void at common law when it is proved that the act of personation was committed with the assent of the member or his agent, and that there was no necessity to rely upon the statute. I think that leaves the case where it was before, and narrows it to the question of agency. I can very well conceive charges of bribery being made. I can conceive a rich man coming into a constituency, or a man supplied with money by other persons, and bribing in such a way a number of people as to lead the mind of the judges to the conclusion that the influence of his money, the hope of one person getting it and the

<sup>11</sup> Ballot Act, 1872, s. 24; Corrupt Practices Act, 1883, s. 3, Sched. 3, Pt. III.

<sup>12</sup> (1886), 4 O. & H. 105.

<sup>13</sup> *Ibid.* 108, 109.

<sup>14</sup> Willes, J., in *Coventry* (1869), 1 O. & H. 105.



fear of another person missing it, may have such an effect upon the mind of the constituency as to debauch it, and make it impossible that a pure election could be held.

"I can imagine a case of undue influence, whether it be spiritual influence (as it has been called sometimes) or temporal influence. I can conceive cases of that description placing the constituency in such fear or exciting such hopes, or raising such apprehensions, or working in such a way upon the vivid imagination of a population, as to make it an impure election, if it is proved that such an idea was widely spread; but I cannot conceive such a thing in the case of personation, because if a dozen people successfully personated a dozen people, the next dozen that came up might have nothing to do with it at all."

NOTE 2.—The definition of personation given in the above Article is contained in sect. 24 of the Ballot Act, 1872. It is unaffected by the Corrupt Practices Act of 1883; but sect. 3 of that Act provides that the expression "corrupt practice" means, amongst other offences, personation as above defined, and by sect. 6 (2) it is made a felony.

"Personation is a very serious offence; it is not merely a misdemeanour, it is a felony,"<sup>15</sup> and it cannot be committed unless there be a corrupt intention.

"It is thoroughly understood in election law," said Denman, J., in *Stepney*,<sup>16</sup> "that, unless there be corruption and a bad mind and intention in personating, it is not an offence. If it is done under an honest belief that the man is properly there for the purpose of voting, it is held in these cases and in other cases<sup>17</sup> analogous that no offence has been committed. Now, on the general principle that personation is a corrupt practice, and is only a bad act against the election law if it is corrupt, it seems to me that we ought to decide here that the first vote is a good vote. . . . To suppose that the Legislature ever intended to enact that a man who with perfect honesty, but from a mere blunder as to his rights, gives a vote, and then (believing that he has a right to do so) gives a second vote, he being on the register, on the same day, is to be deemed guilty of felony, is to impute an intention to the Legislature which is absurd, though, if it had said so in absolutely plain words, we must have carried it out. I do not think that that is the intention of the Act; I think there is still to be added to the offence of personation a corrupt intention, and, where the corrupt intention is absent, the offence of personation cannot have been committed."<sup>18</sup>

<sup>15</sup> *Per* Denman, J., in *Stepney* (1886),  
4 O. & H. 44.

<sup>16</sup> (1886), 4 O. & H. 46.

<sup>17</sup> See *Athlone* (1880), 3 O. & H. 59.

<sup>18</sup> See also *East Kerry* (1910), 6 O. & H. at p. 90.

It has accordingly been decided<sup>19</sup> that the offence of personation is not committed by a person who applies for a ballot paper on a second occasion, honestly believing that he is entitled to vote.

"When this corrupt practice is shown to be committed by an agent of the sitting member," said Blackburn, J., in *Gloucester*,<sup>20</sup> "not only will the agent be guilty of a felony, but it shall also vacate the election, and forfeit the seat. Of course, this is a very severe penalty on the sitting member, and though in a great many cases I have felt that for a small error on the part of the agent it was rather hard that the sitting member should lose his seat, yet I do think that where he has employed an agent who is capable of doing such a thing as persuading another to fraudulently personate and obtain a vote, knowing he was not entitled to it, he properly enough suffers the penalty of having trusted such a person with the management of his election."

#### ART. 24.—False Declaration respecting Election Expenses.

*The election agent of every candidate must, within thirty-five days after the result of the election is declared, transmit to the returning officer a true return respecting election expenses. This return must be in the form contained in the Second Schedule to the Corrupt Practices Act, 1883, or in a similar form, and must contain:* (a) a statement of all payments made by the election agent, together with all bills and receipts; (b) a statement of the amount of personal expenses, if any, paid by the candidate; (c) a statement of all disputed claims of which the election agent is aware; (d) a statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court; (e) a statement of all money, securities, and equivalent of money, received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received.<sup>21</sup>

*The return must be accompanied by a declaration made by the election agent before a justice of the peace in the form required by the said Act.*<sup>22</sup>

*Where the candidate has made the return himself as his election agent, a statement of all money, securities, and equivalent of money, paid by the candidate must be substituted in the return required to be transmitted by the election agent for the like statement of money,*

<sup>19</sup> *Gloucester* (1873), 2 O. & H. 62; *Athlone* (1880), 3 O. & H. 57; *Carrickfergus* (1880), Parliamentary Papers, 337, 1880, p. 34; *Stepney Division* (1886), 4 O. & H. 43.

<sup>20</sup> (1873), 2 O. & H. at pp. 64, 65.

<sup>21</sup> Corrupt Practices Act, 1883, s. 33 (1), as amended by R. P. Act, 1918, s. 47 (1) and Eighth Sched.

<sup>22</sup> *Ibid.* s. 33 (2). For form, see p. 337, *infra*.

securities, and equivalent of money, received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses must be modified as specified in the Second Schedule to the said Act.<sup>23</sup>

At the same time that the election agent transmits his return respecting election expenses, or within seven days afterwards, the candidate must transmit to the returning officer a declaration respecting election expenses made by him before a justice of the peace in the form given in the Second Schedule to the said Act.<sup>24</sup>

But where the candidate is out of the United Kingdom at the time when his election agent transmits his return, the candidate may make the necessary declaration within fourteen days after he comes back to the United Kingdom, and must then forthwith transmit the same to the returning officer.<sup>25</sup>

If in the case of an election for any county or borough the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate may not sit or vote in the House of Commons as member for that county or borough until (1) such return and declaration have been transmitted; or (2) the date of the allowance by the court of an authorised excuse for the failure to transmit the same.<sup>26</sup>

A candidate or an election agent<sup>27</sup> is guilty (1) of an illegal practice, if he without an authorised excuse fails to comply with the

<sup>23</sup> Corrupt Practices Act, 1855, s. 33 (3). See p. 336, *infra*.

<sup>24</sup> *Ibid.* s. 33 (4). See p. 336, *infra*.

<sup>25</sup> *Ibid.* s. 33 (8).

<sup>26</sup> *Ibid.* s. 33 (5).

<sup>27</sup> As to position of election agent, see *ibid.* ss. 25, 34.

<sup>28</sup> *Ibid.* s. 33 (6).

<sup>29</sup> *Ibid.* s. 33 (7).

<sup>30</sup> *Ibid.* s. 64.



It has accordingly been decided <sup>19</sup> that the offence of personation is not committed by a person who applies for a ballot paper on a second occasion, honestly believing that he is entitled to vote.

"When this corrupt practice is shown to be committed by an agent of the sitting member," said Blackburn, J., in *Gloucester*,<sup>20</sup> "not only will the agent be guilty of a felony, but it shall also vacate the election, and forfeit the seat. Of course, this is a very severe penalty on the sitting member, and though in a great many cases I have felt that for a small error on the part of the agent it was rather hard that the sitting member should lose his seat, yet I do think that where he has employed an agent who is capable of doing such a thing as persuading another to fraudulently personate and obtain a vote, knowing he was not entitled to it, he properly enough suffers the penalty of having trusted such a person with the management of his election."

#### ART. 24.—False Declaration respecting Election Expenses.

*The election agent of every candidate must, within thirty-five days after the result of the election is declared, transmit to the returning officer a true return respecting election expenses. This return must be in the form contained in the Second Schedule to the Corrupt Practices Act, 1883, or in a similar form, and must contain: (a) a statement of all payments made by the election agent, together with all bills and receipts; (b) a statement of the amount of*

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In the last paragraph of this article the following words under (2) should be deleted "*upon conviction whereof on indictment he is liable to the punishment for wilful and corrupt perjury,*" and the words "*under section 5 of the Perjury Act, 1911,*" substituted for them. See Perjury Act, 1911, sect. 17 and Schedule, under which the corresponding words in sect. 33 (7) of the Corrupt and Illegal Practices Prevention Act are repealed, and sections 5 and 16 (1) of the Perjury Act, 1911.

*Athlone* (1880), 3 O. & H. 57; *Carrickfergus* (1880), Parliamentary Papers, 337, 1880, p. 34; *Stepney Division* (1886), 4 O. & H. 43.

<sup>20</sup> (1873), 2 O. & H. at pp. 64, 65.

s. 33 (1), as amended by R. P. Act, 1918, s. 47 (1) and Eighth Sched.

<sup>22</sup> *Ibid.* s. 33 (2). For form, see p. 337, *infra*.

securities, and equivalent of money, received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses must be modified as specified in the Second Schedule to the said Act.<sup>23</sup>

At the same time that the election agent transmits his return respecting election expenses, or within seven days afterwards, the candidate must transmit to the returning officer a declaration respecting election expenses made by him before a justice of the peace in the form given in the Second Schedule to the said Act.<sup>24</sup>

But where the candidate is out of the United Kingdom at the time when his election agent transmits his return, the candidate may make the necessary declaration within fourteen days after he comes back to the United Kingdom, and must then forthwith transmit the same to the returning officer.<sup>25</sup>

If in the case of an election for any county or borough the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate may not sit or vote in the House of Commons as member for that county or borough until (1) such return and declaration have been transmitted; or (2) the date of the allowance by the court of an authorised excuse for the failure to transmit the same.<sup>26</sup>

A candidate or an election agent<sup>27</sup> is guilty (1) of an illegal practice, if he without an authorised excuse fails to comply with the above-mentioned requirements,<sup>28</sup> and (2) of an offence upon conviction whereof on indictment he is liable to the punishment for wilful or corrupt perjury, if he knowingly makes the required declaration falsely.<sup>29</sup> Such offence is also deemed to be a corrupt practice.<sup>29</sup>

NOTE 1.—A statement of all payments made by the election agent, together with all bills and receipts. As to when these payments are deemed by the law to begin, see pp. 149—150, 162—166, *infra*.

NOTE 2.—A statement of the amount of personal expenses, if any, paid by the candidate. The expression "personal expenses" as used with respect to the expenditure of any candidate in relation to any election, includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.<sup>30</sup>

The candidate at an election may pay any personal expenses incurred by him on account of, or in connection with, or incidental

<sup>23</sup> Corrupt Practices Act, 1883, s. 33 (3). See p. 336, *infra*.

<sup>24</sup> *Ibid.* s. 33 (4). See p. 336, *infra*.

<sup>25</sup> *Ibid.* s. 33 (8).

<sup>26</sup> *Ibid.* s. 33 (5).

<sup>27</sup> As to position of sub-agent, see *ibid.* ss. 25, 34.

<sup>28</sup> *Ibid.* s. 33 (6).

<sup>29</sup> *Ibid.* s. 33 (7).

<sup>30</sup> *Ibid.* s. 64

to, such election to an amount not exceeding £100, but any further personal expenses so incurred by him shall be paid by his election agent.<sup>1</sup>

In *Rochester*<sup>2</sup> a question was raised as to whether the amount paid by the candidate for the hire of a house during the election ought to be included in the return of election expenses, and Cave, J., said: "With regard to the amount paid for house hire, I am unable to satisfy myself that that is a matter which must be returned as the personal expenses of the candidate; but . . . I am of opinion that under the circumstances of this case we ought to make that an exception under the 23rd section" (which gives the Court power to except an innocent act from being an illegal practice).

NOTE 3.—*A statement of all disputed claims of which the agent is aware.* Disputed claims are those which have been sent in within fourteen days after the day on which the candidates returned are declared elected,<sup>3</sup> and which the election agent either (1) disputes, or (2) refuses to pay, or (3) fails to pay within twenty-eight days after the day aforesaid.<sup>4</sup>

The claimant may bring an action for a disputed claim in any competent court, and any sum paid by the candidate or agent in pursuance of the judgment of such court is deemed to be paid within the time limited.<sup>5</sup>

On cause shown to the satisfaction of the High Court, such Court, on application either by the claimant or by the candidate or his election agent, may by order give leave for the payment of a disputed claim, or of any such expenses as aforesaid, although sent in after the time limited, or although the same was sent to the candidate and not to the election agent.<sup>6</sup>

Any sum specified in the order of leave may be paid by the candidate or his election agent, and is deemed to be paid within the time limited.<sup>7</sup>

Where an action is brought, and the candidate or agent admits his liability but disputes the amount, such amount may, unless the Court on the application of the plaintiff otherwise directs, be forthwith referred for taxation to the proper officer of the Court, and the amount found due shall be the amount to be recovered in such action.<sup>8</sup>

NOTE 4.—*A statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on*

<sup>1</sup> Corrupt Practices Act, 1883, s. 31 (1).

<sup>2</sup> (1892), *Day's Election Cases*, 103.

<sup>3</sup> Corrupt Practices Act, 1883, s. 29 (2), (3).

<sup>4</sup> *Ibid.* s. 29 (7).

<sup>5</sup> *Ibid.* s. 29 (8).

<sup>6</sup> *Ibid.* s. 29 (9).

<sup>7</sup> *Ibid.* s. 29 (10).

<sup>8</sup> *Ibid.* s. 30.



account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received. As to what expenses under this head must be included in the return, or, in other words, what is meant by the words "expenses incurred or to be incurred on account of or in respect of the conduct or management of the election," see pp. 149—159, 162—166, *infra*.

NOTE 5.—A candidate or an election agent is guilty of an illegal practice if he without an authorised excuse fails to comply with the above requirements as to the return and declaration respecting election expenses. By sect. 33 of the Corrupt Practices Act, 1883, the Court has power, in certain circumstances, to make an order allowing an authorised excuse for the failure to transmit such return and declaration, or for an error or false statement therein. As to when this power will be exercised, see Article 32, p. 192, *infra*.

#### ART. 25.—Expenses Incurred by Unauthorised Persons.

A person other than the election agent of a candidate shall not incur any expense on account of holding public meetings or issuing advertisements, circulars or publications for the purpose of promoting or procuring the election of any candidate unless he is authorised in writing to do so by such election agent.<sup>9</sup>

If any person acts in contravention of the above provision he is guilty of a corrupt practice other than personation within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883.<sup>10</sup>

Where the person guilty of an offence against the said provision is a body of persons corporate or unincorporate,<sup>11</sup> every director or officer of that body shall, unless he proves that the act constituting the offence was committed without his knowledge or consent, be guilty of the like offence.<sup>12</sup>

As to the special provision made for relief see Article 31, p. 192, *infra*.

NOTE 1.—The corrupt practice defined in the above Article was created by sect. 34 of the Representation of the People Act, 1918.

Sub-section (3) of that section provides that "any expenses incurred on account of any such purpose as aforesaid [i.e., for the purpose of promoting or procuring the election of the candidate] and authorised by the election agent of the candidate shall be duly returned as part of the candidate's election expenses."

The object of the section is to prevent expenses of the nature

<sup>9</sup> R. P. Act, 1918, s. 34 (1).

<sup>10</sup> *Ibid* s. 34 (2); Corrupt Practices Act, 1883, s. 6.

<sup>11</sup> See Corrupt Practices Act, 1883, s. 64 ("person").

<sup>12</sup> R. P. (No. 2) Act, 1922, s. 1.

indicated being incurred otherwise than as part of the candidate's election expenses.

It may be noticed that no penalty is provided *by this section* for failure to return the expense when duly authorised by the election agent, but such failure would involve the commission both by the candidate and the election agent of the offence of making a false declaration respecting election expenses.<sup>13</sup>

In view of the language of sect. 34 (2) of the Act of 1918, which is reproduced in the above Article, it is submitted that a person can render himself guilty of the "corrupt practice" thereby created without having any corrupt intention or motive, and it is, therefore, advisable for any person who intends to hold a public meeting or to issue literature of a political character to consider carefully whether his action may not involve a breach of the section, and, if so, to obtain the requisite authorisation.

NOTE 2.—*Advertisements, circulars or publications.* It is submitted that the word "publications" must be construed *ejusdem generis* with the words "advertisements" and "circulars."

NOTE 3.—*For the purpose of promoting or procuring the election of any candidature.*

As to when a person becomes a candidate, see pp. 149—150, *infra*. The cases there cited show that a person may become a candidate and incur election expenses long before the dissolution of Parliament and the issue of the writ.

The words "for the purpose of promoting or procuring the election" are identical with those in sect. 17 of the Corrupt Practices Act, 1883, which have been held to have the same meaning as the words "on account of or in respect of the conduct or management of the election."<sup>14</sup>

As to when expenses for public meetings, etc., are incurred within the latter words see pp. 162—166, *infra*.

NOTE 4.—*Where a person or body guilty of an offence . . . is a body of persons corporate or unincorporate, every director or officer of that body shall, unless he proves that the act constituting the offence was committed without his knowledge or consent, be guilty of the like offence.*

This provision was introduced into sect. 34 of the Act of 1918 by sect. 1 of the Representation of the People (No. 2) Act, 1922. Its purpose is to prevent the responsible heads of (1) limited companies, such for instance, as companies owning newspapers, and (2) unincorporated associations, especially of a political character,

<sup>13</sup> See Art. 24, p. 138, *supra*.

<sup>14</sup> See *Rochester* (1892), 4 O. & H. 158.

from escaping liability for contraventions of sect. 34 on the ground that the guilty act was committed by subordinate officers or servants.

The onus of proving that such act was committed without the knowledge or consent of the "director or officer" is placed upon him, and if he cannot discharge it, he is equally liable with the person who actually committed the act constituting the offence.

#### ART. 26.—Illegal Practice.

*The expression illegal practice includes the following offences:—*

(1) *Making or receiving payment or making a contract for payment for the purpose of promoting or procuring the election of a candidate at any election—(a) on account of the conveyance of the electors to or from poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or (b) to an elector on account of the use of any house, land, building, or premises, for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice, unless it is the ordinary business of such elector as an advertising agent to exhibit for payment bills and advertisements and such payment to or contract with such elector is made in the ordinary course of business; or (c) on account of any committee room in excess of the number allowed by the Corrupt Practices Act, 1883, First Schedule.*<sup>15</sup>

(2) *Payment of any sum or incurring any expense by a candidate at an election, or his election agent, or sub-agent within his district, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, in excess of the maximum specified in the Corrupt Practices Act, 1883, First Schedule.*<sup>16</sup>

(3) *Voting at an election by any person who knows that he is prohibited by statute from voting, or inducing or procuring any person to vote at any election knowing that such person is prohibited by statute from voting.*<sup>17</sup>

(4) *Knowingly publishing, before or during an election, a false statement of the withdrawal of a candidate at such election, for the purpose of promoting or procuring the election of another candidate.*<sup>18</sup>

(5) *In the case of a candidate, his election agent, or sub-agent within his district, printing, publishing, or posting, or causing to be printed, published or posted, any bill, placard, or poster, having reference to an election, which fails to bear upon the face thereof the name and address of the printer and publisher.*<sup>19</sup>

<sup>15</sup> Corrupt Practices Act, 1883, s. 7.

<sup>16</sup> *Ibid.* ss. 8, 25.

<sup>17</sup> *Ibid.* s. 9 (1), (3).

<sup>18</sup> *Ibid.* s. 9 (2), (3).

<sup>19</sup> *Ibid.* ss. 18, 25.



(6) *In the case of a candidate at an election, or any agent of his, or any other person, making any payment, advance, or deposit before, during, or after, an election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent acting in person, or by a sub-agent within his district, and in the case of any person, payment of any money provided by any person other than the candidate for any of the said expenses, whether as gift, loan, advance, or deposit, to any person other than the candidate or his election agent.*<sup>20</sup>

*Provided always that this section shall not apply to—(i.) a tender of security to or payment by the returning officer; or (ii.) any sum disbursed by any person out of his own money for any small expense legally incurred by himself if such sum is not repaid to him; or (iii.) payment by the candidate of any personal expenses incurred by him on account of or in connection with or incidental to the election, to an amount not exceeding £100<sup>21</sup>; or (iv.) the payment by any person if authorised in writing by the election agent of any necessary expenses for stationery, postage, telegrams, and other petty expenses, to a total amount not exceeding that named in the authority.*<sup>22</sup>

(7) *In the case of an election agent, or sub-agent within his district, payment—(a) without a judgment or order of a competent Court, or leave of the High Court first obtained, of a claim against a candidate or his election agent in respect of any expenses incurred on account or in respect of the conduct or management of such election, which is not sent in to the election agent within fourteen days after the day on which the candidates returned are declared elected<sup>23</sup>; (b) without such leave, of any of the said expenses after twenty-eight days after the day on which the candidates returned are declared elected.*<sup>24</sup>

(8) *In the case of a candidate or his election agent, failure, without authorised excuse, to comply with the requirements of sect. 33 of the said Act as to the return and declaration respecting election expenses.*<sup>25</sup>

(9) *Making or publishing a false statement of fact in relation to the personal character or conduct of a candidate for the purpose of affecting his return, unless the person making or publishing such*

<sup>20</sup> Corrupt Practices Act, 1883, ss. 25, 28.

<sup>21</sup> *Ibid.* s. 31 (1).

<sup>22</sup> *Ibid.* s. 31 (3).

<sup>23</sup> *Ibid.* s. 29 (2), (3), (8), (9); s. 25.

<sup>24</sup> *Ibid.* s. 29 (4), (5); s. 25. If, however, the election court reports that

such payment was made without the sanction or connivance of the candidate, his election will not be void nor will he be subject to any incapacity by reason of such payment: *ibid.* s. 29 (6).

<sup>25</sup> *Ibid.* s. 33 (6). As to the position of the sub-agent, see *ibid.* s. 25.

statement can show that he had reasonable grounds for believing and did believe the statement made by him to be true.<sup>26</sup>

(10) Any illegal payment, employment, or hiring by a candidate, his election agent, or sub-agent within his district, if personally guilty thereof.<sup>27</sup>

(11) Acting or inciting others to act at a political meeting in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, provided that such meeting is a lawful public meeting held in a parliamentary constituency between the date of the issue of a writ for the return of a member of Parliament for such constituency and the date at which a return to such writ is made.<sup>28</sup>

(12) Voting at a general election by any person for more constituencies than he is entitled to vote for,<sup>29</sup> or asking for a ballot or voting paper for the purpose of so voting.<sup>30</sup> Provided that (a) the fact that any person has asked for a ballot paper in a constituency in circumstances which entitle him only to mark a tendered ballot paper in pursuance of Rule 27 of the First Part of the First Schedule to the Ballot Act, 1872, shall not, if he does not exercise that right, prevent his voting or asking for a ballot or voting paper in another constituency;<sup>1</sup> and (b) the giving of a vote by a returning officer in pursuance of sect. 2 of the Ballot Act, 1872, in the case of an equality of votes, or the asking for a ballot paper for the purpose of so voting, shall not, for the purpose of this section, be deemed to be the giving of a vote as a parliamentary elector, or the asking for a ballot paper for the purpose of so voting.<sup>2</sup>

(13) In the case of a person who is for the time being entitled to vote by proxy<sup>3</sup> in a constituency, himself voting or attempting to vote at an election in that constituency otherwise than by means of the proxy paper, while the same is in force.<sup>4</sup>

(14) Voting or attempting to vote by any person as proxy on behalf of more than two absent voters at an election in any constituency unless that person is voting as the husband or wife, or the parent, brother, or sister of the absent voter.<sup>5</sup>

(15) Voting or attempting to vote by any person at any election under the authority of a proxy paper when he knows or has reasonable grounds for supposing that the proxy paper has been cancelled,

<sup>26</sup> Corrupt Practices Act, 1895, s. 1. As to liability of candidate for agent's statement, see Article 18, p. 62, *supra*, and Corrupt Practices Act, 1895, s. 4, in Appendix II., p. 354, *infra*.

<sup>27</sup> Corrupt Practices Act, 1883, ss. 21 (2), 25. As to what constitutes illegal payment, illegal employment, and illegal hiring, see Articles 27, 28, and 29, at pp. 175, 181, and 187 respectively.

<sup>28</sup> Public Meeting Act, 1908, ss. 1, 2.

<sup>29</sup> See Article 4, p. 15, *supra*.

<sup>30</sup> R. P. Act, 1918, s. 22 (1).

<sup>1</sup> *Ibid.* s. 22 (1) (b).

<sup>2</sup> *Ibid.* s. 22 (1) (c).

<sup>3</sup> *Ibid.* s. 23 (4).

<sup>4</sup> *Ibid* Third Sched., rule 10 (a). See also rule 2.

<sup>5</sup> *Ibid.* rule 10 (b). See also rule 7.

or that the elector to whom or on whose behalf the proxy paper has been issued is dead or no longer entitled to vote at that election.<sup>6</sup>

(16) For the purpose of enabling an elector to vote at a university election, corruptly paying on his behalf any fees which the elector is required to pay in order to be registered or entitled to vote.<sup>7</sup>

NOTE 1.—The distinction between a corrupt practice and an illegal practice has already been pointed out.<sup>8</sup> To constitute a corrupt practice it is essential (subject to one exception<sup>9</sup>) that there should be a corrupt or wicked motive. “An illegal practice, on the other hand, involves no question of motive, pure or otherwise. The only question the Court has to consider is whether there has been a breach of the Act.”<sup>10</sup>

“An illegal practice is forbidden absolutely without any question of a *mens rea*.”<sup>11</sup>

As regards the principle to be applied in dealing with the question whether the act complained of amounts to an illegal practice or not, Pollock, B., in *Lichfield*,<sup>12</sup> said:—

“I think that no Act of Parliament like this, where there is a doubt in the matter, ought to be so construed as to fetter and to interfere with the undoubted right, the civil and constitutional right, of a man, apart from an election, to uphold, and encourage the upholding by others of those political sentiments in which he honestly believes.”

The offences set out under the heading (1) in the above Article are created by sect. 7 of the Corrupt Practices Act, 1883, and according to the language of this section the payment or receipt of payment or contract mentioned must be “knowingly made in contravention of this section.”

In *Pontefract*<sup>13</sup> counsel for the respondent contended that these words meant that in order to amount to an illegal practice within the section the payment, &c., must have been made by the person in question knowing that such payment, &c., was illegal. The Court was not called upon to decide the point, but appeared to take the view that the words “knowingly made in contravention of this section” merely mean “knowingly made on account of the matters specified in clauses (a), (b), or (c).”

<sup>6</sup> R. P. Act, 1918, Third Sched., rule 10 (c).

<sup>7</sup> *Ibid.* Fifth Sched., Part I., rule 29, Part II., rule 35 (Scotland).

<sup>8</sup> See p. 70, *supra*.

<sup>9</sup> *I.e.* the corrupt practice created by s. 34 of the R. P. Act, 1918. See Art. 25, p. 141, *supra*.

<sup>10</sup> *Per* Pollock, B., in *Walsall* (1892),

Judgments, 63. But note the exception contained in para. (16) of the above Article.

<sup>11</sup> *Per* Channell, J., in *Ex parte Forster* (1903), 89 L. T., at p. 19. See preceding footnote.

<sup>12</sup> (1895), 5 O. & H. 34.

<sup>13</sup> (1893), Day's Election Cases, 62—63.



According to this view the word "knowingly" is superfluous, and it is therefore submitted that the law is correctly stated in the above Article.

It is to be observed that in the case of the illegal practice at university elections created by the Representation of the People Act, 1918, and described in paragraph (16) of the above Article, a corrupt motive is expressly made a condition of the offence.

NOTE 2.—*On account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise.* Every payment for the conveyance of voters to or from the poll is illegal, except that, in the case of an election for a county where the nature of the county is such that any electors residing therein are unable to reach their polling place without crossing the sea, it is permissible to provide means for conveying such electors by sea to their polling place.<sup>14</sup>

In *Southampton* <sup>15</sup> it was proved that a Mr. B., who was chairman of a ward Conservative Association and a member of the respondents' executive committee, had sent a telegram to a man at Winchester asking him to come down and vote, and saying, "Fare all right," and that the man had come and voted, and that Mr. B. had paid his fare. As to this, relief was prayed under sect. 22 of the Corrupt Practices Act, 1883.

Wright, J., in giving judgment, after stating that the other charges were not made out, said: "Then there remains only the question of the payment of 2s. made by Mr. B. to the witness P. That was a payment admittedly made in direct contravention of the law, and it cannot be too widely known that whoever pays any sum, however small, for the conveyance of a voter to the poll, or from the poll, will thereby avoid and destroy the very election which he wants to forward.<sup>16</sup> The only exception is if the election in other respects is proved to have been absolutely faultless; and if a Court, like this Court, comes to the conclusion that a particular offence was 'of a trivial, unimportant, and limited character' we have power to relieve. The question here will be whether we have such power."

In the result the Court declared the election of one candidate void and the election of the other good.

In *Lichfield* <sup>17</sup> it was proved that certain payments had been made on behalf of the respondent in respect of the stabling and baiting of horses sent from a distance for the purpose of conveying voters to the poll. Counsel for the respondent admitted this, but contended that the payment for stabling and baiting was not an illegal payment within sect. 7, and that if the mere payment for the baiting

<sup>14</sup> Corrupt Practices Act, 1883, s. 43. ss. 7, 11.

<sup>15</sup> (1895), 5 O. & H. 20.

<sup>17</sup> (1895), 5 O. & H. 30.

<sup>16</sup> See Corrupt Practices Act, 1883,

was an illegal payment, any gentleman who lent his carriage and paid his coachman's wages, and then gave the latter something extra for his dinner or putting up for the night, might be equally regarded as an offender against the law. He further argued that if the contention of the petitioners was correct, it made it practically impossible for any vehicles whatever to be sent from a distance overnight, so as to be ready for the poll in the morning, because no provision could be made for them by anybody, not even by their owner. In that case the horses must stand in the road all night.

As to this, Pollock, B., in giving judgment, said: "I think it is impossible to say that when there has been a systematic arrangement, by which vehicles shall be got within range of the poll, and where the distance is such that they must come there overnight, and possibly leave next day, baiting should be provided for them; I think it is impossible to say that such a payment for baiting is not a payment 'made on account of the conveyance of electors to or from the poll.' . . . Whether, if a case arose in which a gentleman paid money for the baiting of his own horses under some peculiar circumstances, whether, when that case did arise, a different conclusion could be arrived at with regard to the facts, it is unnecessary here to say. My decision is based upon the understanding that the matter was systematic, and, if systematic, I cannot have a doubt that it is within the meaning and intention of the Legislature. I will not go beyond the figures in this case. If it should be that some forty or fifty vehicles are to be sent to a district, and that the baiting of the horses and the feeding and putting up of the drivers must be provided for and money must be paid for it, then it is quite clear to me that this matter is as much included in the intention of the Legislature as the hiring of the vehicle itself."

Bruce, J.,<sup>18</sup> said: "It is not necessary to consider the question whether there would have been anything illegal in the friends of the candidate putting up vehicles, horses, and men gratuitously; but I entertain no doubt that a payment made to procure such accommodation as is necessary to render the vehicles available for the conveyance of electors to or from the poll is a payment within the meaning of the section."

NOTE 3.—*To an elector on account of the use of any house, land, building, or premises, for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice.* In *Pontefract*,<sup>20</sup> a charge of illegal practice under this sub-section<sup>21</sup> was made in respect of certain boards covered with placards which

<sup>18</sup> *Lichfield* (1895), 5 O. & H. at p. 31.

<sup>21</sup> Corrupt Practices Act, 1883,

<sup>20</sup> (1893), *Day's Election Cases*, 126, s. 7 (1) (b).

were placed outside the doors of the houses of various electors. The facts sufficiently appear from the judgment of Hawkins, J., who said:—

“ This section evidently was framed in order to meet the *Westminster* case,<sup>22</sup> where bribery was charged in respect of certain boards which had been exhibited at certain public-houses and other places for hire. With reference to the boards in this case it was admitted that there were a great many, covered with placards, placed outside the doors of the houses of various electors. But that alone is not an illegal practice within the meaning of the statute. The statute requires, to make it an illegal thing, that there should be a contract for the hiring of the right to exhibit such boards. There is not evidence of any such contract; although it is perfectly true that two or three witnesses, having exhibited boards, had afterwards converted them to their own use. I think the very fact that most of the boards were collected after the election was over, by those who had given them out for exhibition, affords cogent support to the view I have taken. I think there is nothing whatever in that charge.”

Where it is the ordinary business of an elector, as an advertising agent, to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, is not to be deemed an illegal practice.<sup>23</sup>

NOTE 4.—*On account of any committee-room in excess of the number allowed by the Corrupt Practices Act, 1883, First Schedule.* As to the number allowed, see p. 61, *supra*.

NOTE 5.—*In the case of a candidate, his election agent, or sub-agent, payment of any sum or incurring any expense, whether before, during, or after an election, on account of or in respect of the conduct or management of such election in excess of the maximum specified in the Corrupt Practices Act, 1883, First Schedule.*<sup>24</sup> In the section of the Act which deals with this matter it is provided that the candidate, or election agent, or sub-agent, who knowingly acts in contravention of the section is guilty of an illegal practice. It is, however, submitted, for the reasons set out on pp. 146—147, *supra*, that these words are surplusage.

It will be noticed that not only *paying* but *incurring* expenses is prohibited by this section.

By sect. 63 a candidate means “ any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others

<sup>22</sup> 1 O. & H. 90.

<sup>23</sup> Corrupt Practices Act, 1883, s. 7 (3).

<sup>24</sup> *Ibid.* s. 8.



to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued."

In *Rochester*<sup>25</sup> counsel submitted that under the above section the respondent was not "a candidate" until after the dissolution and the issue of the writ, and that the expenses incurred by him before that time could not be included in the election expenses. As to this *Cave, J.*, said<sup>26</sup>:

"When a man begins to incur expenses with regard to an election, there is nothing to prevent his appointing an election agent. In some cases canvassers are set to work, and committees are formed, long before dissolution, or the issue of the writ. If those expenses are not to be returned as election expenses, the words of the Act as to the maximum amount of expenditure are set at naught."

The law has been repeatedly laid down in similar terms by other Judges,<sup>27</sup> and in *Great Yarmouth*<sup>28</sup> Channell, J., said: "I quite adopt the view which has been put forward by other Judges that the time when the election is supposed to commence . . . certainly is not limited to the commencement of the active part of the election by the occurrence of a vacancy or by the issue of a writ." The same view of the law was expressed by Lawrance, J., in *Maidstone*<sup>29</sup> and *Bodmin*.<sup>30</sup> In each of the three last-mentioned cases, Grantham, J., differed,<sup>1</sup> but it is respectfully submitted that the law is correctly laid down in the numerous decisions to the contrary which are referred to above.<sup>2</sup> On the other hand, it must be remembered, as Channell, J., said in *Great Yarmouth*<sup>3</sup>: "Everything which a candidate expends because he is a candidate is not, according to the decisions, necessarily expended in the conduct and management of an election." Thus it has been held<sup>4</sup> that registration expenses are not expenses in the conduct and management of an election and therefore need not be returned as election expenses.

See further, as to when election expenses begin and what expenses must be returned by the candidate as such, pp. 152, 162—166, *infra*.

The following expenses may be legally incurred<sup>5</sup>:—

(1) Expenses in the employment of the persons mentioned in Article 13, p. 54, *supra*;

(2) The personal expenses of the candidate: see pp. 139, 144, *supra*;

(3) The expenses of printing and advertising and the expenses

<sup>25</sup> (1892), 4 O. & H. 157.

<sup>26</sup> *Ibid.*

<sup>27</sup> See extracts from judgments cited, pp. 162—166, *infra*.

<sup>28</sup> 5 O. & H. 188.

<sup>29</sup> *Ibid.*, 209, 210.

<sup>30</sup> *Ibid.*, 228.

<sup>1</sup> *Ibid.*, 191—193, 208, 209, 227, 228.

<sup>2</sup> See *East Dorset* (1910), 6 O. & H. at p. 39—40, 49.

<sup>3</sup> 5 O. & H. 190.

<sup>4</sup> *Ibid.*, and see pp. 156, 157, *infra*.

<sup>5</sup> Corrupt Practices Act, 1883, Schedule 1, Pts. 1—3, as amended by R. P. Act, 1918, s. 47 (1), and Eighth Sched.

of publishing, issuing, and distributing addresses and notices. In *Barrow-in-Furness*,<sup>6</sup> it was held that addresses and notices cover bills;

(4) The expenses of stationery, messages, postage,<sup>7</sup> and telegrams;

(5) The expenses of holding public meetings<sup>8</sup>;

(6) In a borough the expenses of one committee room, and if the number of electors exceeds 500, one for every complete 500 electors, and one for any number over 500; in a county the expenses of a central committee room, and of one for each polling district, and if the number of electors in a polling district exceeds 500, of one for every complete 500 electors over and above the first 500;

(7) Expenses in miscellaneous matters other than those mentioned above not exceeding £200.

The maximum amount which may be legally incurred for expenses, other than (1) personal expenses, (2) the fee, if any, paid to the election agent (not exceeding in the case of a county election £75 and of a borough election £50, without reckoning for the purposes of that limit any part of the fee which may have been included in the expenses under the heads set out above), and (3) sums paid for the conveyance of voters by the sea to the poll<sup>9</sup> shall not exceed an amount equal to:—

(1) In the case of a county election: 7*d.* for each elector on the register.

(2) In the case of an election for a borough: 5*d.* for each elector on the register.<sup>10</sup>

Where there are two or more joint candidates at an election the maximum amount of expenses mentioned under the above heads shall, for each of the joint candidates, be the amount produced by multiplying a single candidate's maximum by one and a half and dividing the result by the number of joint candidates.<sup>11</sup>

Where (1) the same election agent is appointed by or on behalf of two or more candidates at an election; or (2) two or more candidates by themselves or any agent or agents (i.) hire or use the same committee room for such election, or (ii.) employ or use the services of the same sub-agent, clerks, messengers, or polling agents, at such election, or (iii.) publish a joint address or joint circular or notice at such election; such candidates are joint

<sup>6</sup> (1886), 4 O. & H. 78; *cf. Stegney*, *ibid.* 52, 54, 55, where the Court differed on this question.

<sup>7</sup> R. P. Act, 1918, s. 33 (2) gives to duly nominated candidates certain rights of free postage.

<sup>8</sup> As to the right now given to candidates to use public elementary schools for public meetings, see R. P. Act, 1918, s. 25.

<sup>9</sup> See Corrupt Practices Act, 1883,

s. 48.

<sup>10</sup> R. P. Act, 1918, s. 33 (1), and Fourth Sch. which substitute the above maximum scale for that contained in Part IV. of the First Sch. to the Corrupt Practices Act, 1883.

<sup>11</sup> *Ibid.* which substitute the above provisions for paragraph (3) of Part V. of the First Sch. to the Corrupt Practices Act, 1883.

candidates at such election: but the employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial or unimportant character, shall not of itself constitute persons joint candidates.<sup>11</sup> There is nothing to prevent candidates from ceasing to be joint candidates.<sup>11</sup>

*Expenses before candidature need not be returned.*<sup>12</sup>—"To my mind," said Cave, J., in *Norwich*,<sup>13</sup> "there is a great distinction between the expense of getting a candidate and the expense of promoting his election after you have got him. If the primary and direct and real object is to get a candidate, I think that the expenses incurred in so doing are not within the Act, although indirectly they may promote the interests of the party. If the nominal object is to get a candidate, but the real object is to promote the election of the individual candidate, then I should say it would be within the Act."

In the same case, Denman, J., said<sup>13</sup>: "According to my view, these expenses for the meeting were not really in substance expenses incurred in the conduct or management of that election; they were expenses incurred in order to induce a particular person to become a candidate, and the two things are, in my judgment, totally distinct. I think, therefore, that until the respondent had consented to become a candidate, the payment was not a payment on his behalf."

*Whether expenses of public meetings and political lectures are election expenses.*—As to the question whether the expenses of public meetings and political lectures are election expenses, and therefore ought to be included in the return,<sup>14</sup> the judgment of the Court in *Haggerston*<sup>15</sup> showed that this is a question of fact which must always depend on the particular circumstances of each case. If the meeting in question was called with the direct object of advancing the election of the candidate, and not merely for the purpose of advancing political principles, then the expenses of the meeting would be election expenses.

In the case just mentioned the election took place on July 17, 1895. The respondent admitted that he became a candidate on November 17, 1892. The legal maximum of expenses was £500, and the respondent returned an expenditure of £319. Expenses had been incurred between 1892 and the date of the election by the Haggerston Unionist Council, of which the respondent was president, in organising meetings and lectures, the payment of officers, and payments on account of illustrated almanacs containing matter in support of the respondent's candidature, pamphlets

<sup>11</sup> Corrupt Practices Act, 1883, Sched. 1, Pt. 5 (4).

<sup>12</sup> *Norwich* (1886), 4 O. & H. 84.

<sup>13</sup> *Ibid.* 86.

<sup>14</sup> See Article 26 (8), p. 144, *supra*.

<sup>15</sup> (1896), 5 O. & H. 72.



containing his speeches, pledge cards and portrait cards, &c. It was contended that these expenses were election expenses, and that they would make the respondent's election expenses above the legal maximum.

As to the expense in respect of the public meetings, Bruce, J.,<sup>16</sup> said:—

“Of course, public meetings cannot be held without expense, but in my opinion the expenses of such meetings are not election expenses, unless the meetings are in some way connected with the election of the candidate. A meeting that is called for general political purposes does not, I think, become an election meeting, merely because a candidate attends it, nor even because some allusions are made to his candidature. Every meeting of any kind that a candidate attends may have the effect of increasing his popularity and making him better known to the electors, but incidental matters of that kind do not alter the character as regards the expense of the meetings. In each case it must be a question of fact whether the main object of the meeting is to promote the election of the candidate.

“The lectures in 1893, about which we have heard so much, were, no doubt, of a political character, but they were lectures to advance political principles; and I think it would be most mischievous to hold that the expenses of such lectures should be regarded as election expenses. If a candidate opens a bazaar, or lays a foundation stone, or takes the chair at a charity meeting, he may by so doing indirectly tend to promote his election, but the expenses attending such meetings, or the expenses of the candidate attending them, are not to be considered as election expenses. The line must be drawn between meetings called with the direct object of advancing the election of the candidate and meetings called for another object, from attendance at which the candidate only derives some indirect or remote advantage.”

In the same case<sup>17</sup> Wright, J., laid down the law as follows:—

“The giving of lectures for what has here been called the education of the constituency is not at all necessarily an expense on account of the election, or an election expense. We think it would be unduly confining the methods of political work and political enlightenment in this country, if we were to attempt to lay down any such general rule as that lectures, even though given with a view of advancing the prospects of a particular candidate, are necessarily election expenses; we think that must depend upon the circumstances of each case.”

As regards the other matters in question Wright, J., said<sup>18</sup>:—

<sup>16</sup> (1896). 5 O. & H. 72.

<sup>17</sup> *Ibid.* 70.

<sup>18</sup> *Ibid.*

“The illustrated almanacs containing the matters which they did in support of Mr. L. (the candidate) personally, the pamphlets containing his speeches, certainly the pledge cards, and I think the portrait cards and to some extent the boards, were all matters which were expenditure on account of the election, and, in so far as they ought in law to have been held to be expenditure made by Mr. L. (the candidate),<sup>18</sup> ought to have been included in his return.”

In *Great Yarmouth*<sup>19</sup> Channell, J., said:—

“Now it seems to me that there are two classes of expenditure which a candidate almost invariably does incur, and which he begins to incur from the time, at any rate, when he is announced as candidate. First of all there is a class of expenses incurred in promoting and disseminating the political opinions of the party to which he belongs, and in holding meetings for the purpose of delivering speeches upon this or that subject which the party politicians have taken up, or which they take up in answer to what their opponents are taking up.

“Expenses must be incurred in that way by an intending candidate, and a candidate who comes down and makes speeches in support of what are supposed to be the principles of his party is incurring expenses and incurring those expenses with reference to his future election, because he hopes if he can establish the principles of his party to be in a majority in the constituency, so that when he comes to be the actual candidate he will get elected, and so of course he is doing it with reference to his own position as candidate, and in reference to his own election. But in my opinion those expenses, if they can be identified as being in reference to the political views of his party, are not expenses ‘in respect of the conduct and management of his election.’”

*Expenses of “nursing the constituency.”*—In the case last cited Channell, J., after dealing with the class of expenses referred to in the passage quoted above, said<sup>20</sup>:—

“Then there is another class of expenses which is much more doubtful but which always occurs, and that is this, the expenses which a candidate incurs for the purpose of making himself personally popular. There is an expression which is sometimes used in these cases—and one has to use the slang expressions in these cases—and that is ‘nursing a constituency.’ Now that class of expenses is not, I think, necessarily part of the conduct and management of an election. You have to look carefully at each expense to see whether it is identified with the particular election in prospect, but speaking generally, expenses of that character would not in my opinion come within ‘expenses in respect of the conduct and

<sup>18</sup> But see now R. P. Act, 1918, s. 34, and Art. 25, p. 141, *supra*.

<sup>19</sup> (1906), 5 O. & H. 189.

<sup>20</sup> *Ibid.* 190.

management of the election,' which have to be paid through the election agent, and which have to be kept within a definite maximum. At the same time it is obvious that the very things which are done for the purpose of what I referred to as 'nursing the constituency,' or for promoting the personal popularity of the candidate, would require very careful consideration as to whether or not they come within the corrupt practices, either of bribing or treating.

"Now it is in that light that we have to consider the matters charged here, and we commence with the various meetings, which were mostly, but not entirely, ward meetings. For the reasons I have already given I do not think that the expenses of those meetings would be expenses in the conduct and management of the election. They no doubt had a slight bearing upon it, for Mr. F—— came to address the meetings upon political subjects, but so far as they were 'political' meetings they do not come within the section. So far as they were municipal meetings of course they do not do so either, therefore I do not think they were election expenses."

*Expenses of committee room.*—In *St. George's*<sup>21</sup> a question arose as to whether the expenses of using a certain room as a committee room should be included under the head of election expenses. It was proved that the petitioner had taken a house in the constituency. He had built at the further end of the yard a room which he had furnished as a club room, and which he had allowed the Radical Association to use as a club for its meetings, and during the election it was used as a committee room. The petitioner paid all the expenses in connection with the room, and did not include any of them in his return of his election expenses. In giving judgment, Pollock, B., said:—

"When an election is taking place there must be a committee room somewhere, and that committee room must be hired unless the candidate carries it on in his own house, and there must be the expenses of the rent, coals, gas, cleaning, and so forth, and, but for this club room, they must have gone elsewhere; it was found more convenient to have this club room, but the people who inhabited it were the people who were workers for the election: therefore it seems to me that these were election expenses. The decision in this case is important, because it is just one of those little things that, until the law is known, may prove a source of difficulty in the minds of persons who are not acquainted with the law, and it is as well that they should know in the future that, unless they make a return of such expenses, they are guilty of a breach of the Act of Parliament."

<sup>21</sup> (1895), 5 O. & H. 114.



*Registration expenses are not election expenses.*—Willes, J., in dealing with this question under the old statute (26 Vict. c. 29, s. 4) in 1869 in *Penryn*,<sup>22</sup> went no further than to say: "These are expenses which could not, as I read the Act, probably come into a properly-framed account, though I should not like to advise anyone to leave them out who was anxious to avoid the penalties of not accounting."

In more recent years, however, the Court has held that such expenses may be lawfully paid.<sup>23</sup> But if the candidate does expend money in this way, he should be careful to do it in such a way that it cannot be suggested against him that it was really a payment for the purpose of promoting his election.

"It seems to me," said Vaughan Williams, J., in *Stepney*,<sup>24</sup> "that although registration expenses may lawfully be paid for by the candidate, the candidate is doing a very imprudent and unwise thing, if he chooses to pay those expenses by way of a subscription to an association like this Stepney Conservative Association. It did not confine its operations to registration. . . . They concerned themselves with all sorts of matters other than registration."

In the same case Cave, J., said<sup>25</sup>: "Unless an election agent can make it quite clear that he has not been doing election work under the guise of registration work, he must not be surprised, when his accounts are brought before the election court, if the judges take the view that he has been purposely muddling the two accounts up together, in order that he may escape from the fetters of the Act of Parliament."

*Moneys paid in improving the registration of the constituency and in publishing a newspaper are not election expenses.*—In *Kennington*<sup>26</sup> it was proved that the respondent, who was accepted as a candidate for the constituency about eight months before the election, paid almost all the expenses connected with improving the registration of the borough in the interest of himself and his party, the amount being £145. It was also proved that in August, three months before the election, the respondent started a newspaper called the *South London Standard*, which advocated his own political views. The paper was discontinued in January as it did not pay. The respondent paid £500 in respect of this paper, and it was argued on behalf of the petitioner that these sums of £145 and £500 were in reality expenses incurred "in the conduct and management of the election."<sup>27</sup>

In giving judgment for the respondent, Field, J., said<sup>27</sup>: "The

<sup>22</sup> (1869), 1 O. & H. 132.

<sup>23</sup> See the observations of Channell, J., in *Great Yarmouth* (1906), 5 O. & H. at p. 190.

<sup>24</sup> (1892), *Day's Election Cases*,

p. 123.

<sup>25</sup> *Ibid.* 118.

<sup>26</sup> (1886), 4 O. & H. 93.

<sup>27</sup> *Ibid.* 94.

Legislature leaves the different parties in the country to follow their own interests in ascertaining and inducing a revising barrister<sup>27</sup> to say who are and who are not qualified to vote, and I must confess that merely because a person, who is a candidate, looks after his interests to ascertain that no persons but those who are favourable to him are upon the register and are qualified to be on the register, I am quite unable to come to the conclusion that that is an expense on account of the election, or on account of the conduct or management of the election. It is simply a question to me as a juryman to decide, and in this case I shall certainly come to that conclusion. The same observations apply to the *South London Standard*."

"I have no doubt whatever," said Field, J.,<sup>28</sup> "that the respondent would not have published this paper at all, unless he had thought it would assist him. Whether he thought it would be a good speculation pecuniarily, I do not know, but the question is whether it is an expense of conducting or managing the election. It is not for me to say what difficulties might arise if we were to hold that. I have simply to decide whether the case falls within the language and spirit and intention of the Act, and I am very clearly of opinion that in neither of these cases was the respondent guilty of an illegal practice."

*Expenses of conversazione.*—In Rochester<sup>29</sup> the respondent had paid for certain expenses in connection with a conversazione given by the Constitutional Association of the borough, and the question for the Court was, *inter alia*, whether these expenses were election expenses, and therefore expenses which ought to have been included in the return. The facts were as follow:—In May, 1892, it was suggested to the respondent by the Constitutional Association that it would be desirable to give a conversazione. The respondent assented; a conversazione was held on May 4th and 5th, refreshments were provided at a nominal price, and the extra expenses were borne by the Association. The election took place two months later, on July 4th, 1892, and none of these expenses was returned in the respondent's return of expenses. In the result the Court held the election void on the ground of corrupt treating and illegal practices by the respondent's agents.

Cave, J., said<sup>30</sup>:—"With reference to the conversazione, looking at the time at which it was held, and that it was the obvious intention of those who took part in it to promote the return of the respondent, it seems to me that, if it had been innocent throughout, nevertheless it must necessarily have been returned as a portion of the election expenses of the candidate."

<sup>27</sup> The effect of the R. P. Act, 1918, is to abolish the revising barrister and substitute for him the registration officer.

<sup>28</sup> (1886), 4 O. & H. 94, 95; referred

to with approval by Pollock, B., in *Lichfield* (1895), 5 O. & H. 33—34.

<sup>29</sup> (1892), 4 O. & H. 158.

<sup>30</sup> *Ibid.* 159.

It is sometimes a difficult question to say whether expense incurred by an association or individual which undoubtedly is an assistance to the candidate is or is not an election expense. The test appears to be this: Was the expense incurred by the association or individual an expense incurred for their own ends and their own purposes, or was it one of the ordinary expenses of the candidate? In the former case it would not be, in the latter it would be, an election expense.

This question arose in *Stepney*<sup>1</sup> in regard to payments made by the Licensed Victuallers' Association, and in again in *Cockermouth*,<sup>2</sup> in regard to the expenses of a tea meeting given by the Liberal Unionist Association. In both cases the payments in question were held not to be election expenses. In the former *Cave, J.*, said<sup>1</sup>:—"With regard to the Licensed Victuallers' Association, I see no ground at all for saying that those were election expenses. They appear to have been expenses incurred by them for their own purposes. No doubt they were desirous to assist Mr. Isaacson, whom they preferred as a candidate to Mr. Thompson, but it does not follow that because they were desirous of doing that, every expense that they chose to run into would become an election expense. They may have made themselves agents for Mr. Isaacson, so that any corrupt practice traced to them might unseat him: I do not say that it would, because it has not been necessary for us to direct our attention specifically to that point; but it does not follow that, because that is so, every expense that they resort to thereby becomes an election expense which must be paid by Mr. Isaacson. If that were so, the fate of a candidate would be very deplorable. He would have no control over persons who chose to say that they were acting in his interest and for his benefit, and would be compelled to pay every expense that they might think fit to incur. No such liability exists, and I do not think the Licensed Victuallers' case was one in which it can be said that the expenses were expenses of conducting the election, and not expenses rather incurred by the association for their own ends, and for their own purposes, quite distinct from Mr. Isaacson's election, although undoubtedly his election was one of the things which they were anxious to secure."

In *Cockermouth*, Channell, J., said<sup>3</sup>:—

"The difference between an act done in the conduct and management of the election and a thing done merely for the promotion of the success of a particular candidate seems to me to be this: if another person pays an expense and that expense is one of the ordinary expenses of the candidate, so that the doing of that by the

<sup>1</sup> (1892), *Day's Election Cases*, 118,  
119.

<sup>2</sup> (1901), 5 O. & H. 158.

<sup>3</sup> *Ibid.*



third person relieves the candidate from part of his election expenses, then the candidate must treat that assistance as given to him in respect of his election expenses, and must treat the expenses as part of his expenses. If he, being merely a person interested for some reason as a Liberal Unionist or any other reason in the success of a particular candidate, chooses to do things on his own account, which do not go to relieve the candidate from any portion of his election expenses, that is not doing anything in reference to 'the conduct or management of the election.' . . . No candidate can prevent any people who think they would like him to be elected, because they think him more in accordance with their own special views, either upon vaccination or upon temperance or any of the other things which people have strong opinions about, incurring expenses, printing literature, and doing various things in support of the particular candidature, and none of those things comes into the candidate's expenses."

See further, as to what are election expenses, pp. 162—166, *infra*.

The provisions of the Corrupt Practices Act, 1883, prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, are not to affect the right of any creditor who, when the contract was made or the expense was incurred, was in ignorance of the same being in contravention of the Act.<sup>4</sup>

NOTE 6.—*The expression illegal practice includes . . . voting at an election, knowing that the person so voting is prohibited by statute from voting, or inducing or procuring any person to vote at an election knowing that such person is prohibited by statute from voting.*<sup>5</sup>

In *Stepney*<sup>6</sup> one of the charges against the election agent was that he had procured persons who were disqualified to vote.

As to this, Cave, J., said: "There is no doubt that certain voters who were disqualified, . . . did vote, which they ought not to have done. They were, however, called, and said they did not know they were disqualified; and that is quite possible, as they were persons who could not be expected to study the Act of Parliament. For that reason, however, it is incumbent on the agent who employs them to warn them not to vote. But I come to the conclusion that he did not 'procure' them to vote; and though I do not think he took enough trouble to prevent them from voting, that would not amount to the offence with which he is charged, and of which, therefore, he must be acquitted."

<sup>4</sup> Corrupt Practices Act, 1883, s. 19.

<sup>5</sup> *Ibid.* s. 9 (1).

<sup>6</sup> (1892), 4 O. & H. 178.

In the case of this illegal practice and that referred to in the following note, both of which are dealt with in sect. 9 of the Corrupt Practices Act, it is expressly provided<sup>7</sup> that the candidate shall not be liable, nor shall his election be avoided, for the illegal practice of his agent other than his election agent or sub-agent.

NOTE 7.—*The expression illegal practice includes . . . knowingly publishing before or during an election a false statement of the withdrawal of a candidate at such election, for the purpose of promoting or procuring the election of another candidate.*<sup>8</sup> In the case of this illegal practice, as in the case of that dealt with in the preceding note, a candidate is not liable nor is his election avoided for the act of his agent other than his election agent or sub-agent.<sup>9</sup>

NOTE 8.—*The expression illegal practice includes, . . . in the case of a candidate, his election agent or sub-agent, printing, publishing, or posting, or causing to be printed or posted, any bill, placard, or poster, having reference to an election, which fails to bear upon the face thereof the name and address of the printer and publisher.*<sup>10</sup> In *Bettesworth v. Allingham*,<sup>11</sup> the question of what amounted to “printing or causing to be printed,” under the corresponding section [14] of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, was discussed.

There is no reported case as to the meaning of the words “bill, placard, or poster,” but in *Barrow-in-Furness*,<sup>12</sup> Field, J., described the word “bill” as “a very large word indeed.”

In *Cockermouth*<sup>13</sup> it was proved that the copies of the respondent's election address did not bear the printer's name. The address was printed on the back of photographs of the respondent, which bore the stamp of the London Stereoscopic Company. Counsel submitted that the candidate's address as sent to the electors was not a bill, placard, or poster within the meaning of sect. 18. Darling, J., said: “I think the matter absolutely trivial. The address bears the stamp of the London Stereoscopic Company. Even if it amounts to a technical breach of the statute, it is a matter in which we should certainly give relief.”

Channell, J., in concurring, said that the section was aimed at documents which were anonymous or of doubtful authority, so that the printer might be asked who had authorised him to issue such a document. This was an election address signed by the respondent, and he did not think it came within the section at all.

As to the meaning of the words “having reference to an election,” see pp. 152—154, *supra*, 162—166, *infra*.

<sup>7</sup> Corrupt Practices Act, 1883, ss. 9 (3), 25.

<sup>8</sup> *Ibid.* s. 9 (2).

<sup>9</sup> *Ibid.* s. 9 (3).

<sup>10</sup> *Ibid.* s. 18.

<sup>11</sup> (1885), L. R. 16 Q. B. D. 44.

<sup>12</sup> (1886), 4 O. & H. 76.

<sup>13</sup> (1901), 5 O. & H. 156.

NOTE 9.—*The expression illegal practice includes the following offences: . . . (a) in the case of a candidate at an election, or any agent of his, or any other person, making any payment, advance, or deposit, before, during, or after an election in respect of election expenses otherwise than by or through the election agent acting in person or by a sub-agent; and (b) in the case of any person, payment of money provided by any person, other than the candidate, for election expenses, whether as gift, loan, advance, or deposit, to any person other than the candidate or his election agent.*<sup>14</sup> But the aforesaid provisions shall not apply to—(i.) a tender of security to or payment by the returning officer; (ii.) any sum disbursed by any person out of his own money for any small expense legally incurred by himself if such sum is not repaid to him<sup>15</sup>; or (iii.) payment by the candidate of any personal expenses incurred by him on account of, or in connection with, or incidental to the election to an amount not exceeding £100<sup>16</sup>; or (iv.) the payment by any person, if authorised in writing by the election agent, of any necessary expenses for stationery, postage, telegrams, and other petty expenses to a total amount not exceeding that named in the authority.<sup>17</sup> The above provisions (a) and (b) are contained in sect. 28 of the Act. By the first all election expenses, with the exception of the expenses referred to under the heads (i.), (ii.), (iii.) and (iv.), must be paid by the election agent, who is thus made responsible for all expenditure in connection with the election; whilst by the second, all moneys provided by any person other than the candidate are to be paid to the candidate or his election agent. A breach of either of these provisions is an illegal practice.

It should be noticed that all expenses incurred by *any person whatever*, not merely by the election agent, on account of or in respect of the conduct and management of the election, are within the meaning of the provisions, and are therefore election expenses which must be included in the return, unless they come under one of the four excepted heads.<sup>18</sup>

Every payment made by an election agent, whether by himself or a sub-agent, in respect of any expense incurred on account of or in respect of the conduct or management of an election, must, except where less than 40s., be vouched for by a bill stating the particulars and by a receipt.<sup>19</sup>

In *Ipswich*,<sup>20</sup> counsel for the respondent contended that "expenses incurred on account of or in respect of the conduct and management of the election" could only apply to expenses incurred

<sup>14</sup> Corrupt Practices Act, 1883, s. 28.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.* s. 31 (1); Schedule 1, Pt. 2 (2).

<sup>17</sup> *Ibid.* s. 31 (3); Schedule 1,

Pt. 2 (4).

<sup>18</sup> *Ipswich* (1886), 4 O. & H. 73.

<sup>19</sup> Corrupt Practices Act, 1883, s. 29 (1).

<sup>20</sup> (1886), 4 O. & H. 70.



by the person who had the conduct and management of the election, that is, by the election agent, and, consequently, that the section did not affect the payment by persons other than the election agent of expenses incurred by themselves. "This view," however, said Cave, J.,<sup>21</sup> in giving judgment for the petitioners, "is at once disposed of by the proviso, which exempts from the operation of the section sums disbursed by any person out of his own money for any small expenses legally incurred by *himself*; which shows that, but for the proviso, all expenses incurred by any person whatever on account of or in respect of the conduct and management of the election would be within the clause, and that only such expenses are excepted as are—(1) small; (2) legal; (3) incurred by the party paying them himself; and (4) not repaid to him. . . . The only consistent interpretation of the section is that those expenses which, if incurred by the election agent, must have been returned by him as expenses incurred on account of or in respect of the conduct and management of the election, are equally within the 28th section, whether incurred by the election agent or by any other person. If the expenses incurred by A. B. are such that, if they had been incurred by the election agent, they would have been illegal, they are within the section [28], as is shown by the proviso, and if the expenses incurred by A. B. are such that, if incurred by the election agent, they would have been legal, but must have been returned by him, then also they are within the section, and payment of them by A. B. is an illegal practice, unless they are—(1) small; (2) legally incurred by A. B.; (3) paid out of his own money; and (4) not repaid to him."

*Election expenses.*—The words used in the Act are "expenses incurred on account of or in respect of the conduct or management of such election."

What, then, do these words include? First, in order to understand their meaning, it is necessary to know when the election begins and when it ends.

As to the question When does the election begin? the Courts have consistently refused to lay down any definite rule on the point. Each case must be considered with reference to its particular circumstances. The Court will take into consideration the whole of the facts, the nature, extent, and amount of the work done, and of the expenses incurred; the question how far the operations of the candidate were continuous up to the election or were intermittent; and, above all, whether the evidence goes to show that everything has been done in good faith, or whether, on the other hand, it shows an attempt to evade the Act.

<sup>21</sup> (1886), 4 O. & H. 73, 74.

"It is impossible to say that only those expenses are to be returned which are incurred after the writ is issued. The time which, in many cases, elapses between the issue of the writ and the day of the election is too short to admit of the necessary preparations being made for conducting the election, and it is absolutely essential that preparations of that kind should be begun and expenses should be incurred in anticipation of the issue of the writ in many instances and before it actually does issue. There is nothing in the Act which forbids expenses being incurred before the issue of the writ, there is nothing in the Act which forbids the candidate to incur such expenses. The Act requires, no doubt, that they shall be paid by the election agent, and so long as they are paid by the election agent it does not require that they shall in all cases be incurred by him, although undoubtedly with regard to some of them it is necessary that they should be." <sup>22</sup>

"For some reason, good or bad," said Lord Kyllachy in *Elgin and Nairn*,<sup>23</sup> "the Legislature has confined the enactment to expenses which can be attributed to the 'conduct and management of the election'; and these words, as it seems to me, at least suggest and contemplate an election, which is not *in nubibus*, but is reasonably imminent. . . . Accordingly, while I think that the Act indicates plainly enough the kind of period which it contemplates, it contains nothing in the shape of hard-and-fast definition; and, that being so, I apprehend the result is that it is left to us, as election judges, and it becomes our duty, to consider each case with respect to its own facts, and to say in each case whether or not special circumstances exist requiring us to hold that the election began prior to what I may call the normal period. In considering that question I apprehend we are to have regard to the whole facts—the nature of the work done, and of the expenses incurred; the extent and amount of that work, and of those expenses; the question how far the operations of the candidate were continuous up to the election or were intermittent, taking the shape merely of periodical visits to the constituency. Above all, we are, I apprehend, to have regard to this, whether we have before us evidence of any attempt to evade the Act—evidence, for example, of profuse expenditure purposely antedated, so as to escape the Act; or whether, on the other hand, everything appears to have been done in good faith, and in ordinary course, the pre-election operations and pre-election expenditure being on the whole fair and reasonable—that is to say, fair and reasonable having regard to the position of the candidate and the character of the constituency."

In the same case, Lord McLaren said <sup>24</sup>:—

<sup>22</sup> *Per Cave, J.*, in *Rochester* (1892),  
Judgments, 80.

<sup>23</sup> (1895), 5 O. & H. 10, 12.

<sup>24</sup> *Ibid.* 5, 6.

“ ‘Conduct or management of such election’ means a definite election within the knowledge and contemplation of the parties who are engaged in conducting and managing it. . . . Again, there may be a case of an unexpected death vacancy, where an election could not be in the thoughts of the people, until the vacancy occurred; but there may be intermediate cases, and the late general election sufficiently illustrates my meaning—the case where there is a vote in the House of Commons adverse to the Ministry, and where from the moment that vote is announced everyone is looking forward to a dissolution of Parliament, with a view to determining whether the Government of the day is to continue to enjoy the confidence of the country. I should certainly hold that from that time the election had begun in the sense of the sections we are considering. I do not say that it may not have begun at an even earlier period. If, for example, a candidate, not proceeding upon any public and patent facts, but trusting to his own political sagacity and looking round the political horizon, thinks that an election is imminent, and proceeds to institute what is called a canvass of the constituency, which he continues without intermission down to the election, it may very well be that in such a case his own judgment as to when it is necessary to attend to his electoral interests shall be taken as fixing the commencement of that particular election.

“ I think I have said enough to indicate that in view of the statute which I adopt, it is impossible to lay down any definite term or to deal with this otherwise than as a question of fact in which the general political history of the period and the conduct of the individual candidate are both to be taken into account.”

In a subsequent case, Pollock, B., said,<sup>25</sup> after referring to this judgment:—“ I entirely agree with Lord McLaren when he said that what is meant by an election is a definite election within the knowledge and contemplation of the parties. . . . ”

“ I think,” said Hawkins, J., in *Walsall*,<sup>26</sup> “ the limit of time to which we ought to apply our minds is a period commencing from the time when it was first known that the respondent announced his intention to present himself as a candidate for election at the next ensuing election.”<sup>27</sup>

“ As soon as a candidate begins to hold meetings in the constituency to advance his candidature—in other words, as soon as he begins to take measures to promote the election—the election commences. . . . I therefore hold,” said Bruce, J., in *Lichfield*,<sup>28</sup>

<sup>25</sup> *Lichfield* (1895), 5 O. & H. at p. 35.

<sup>26</sup> (1892), 4 O. & H. 125; approved by Pollock, B., in *Lichfield* (1895), 5 O. & H. p. 36.

<sup>27</sup> In *Great Yarmouth* (1906), 5 O. & H. at p. 193, Grantham, J., expressly dissented from this statement of the law. See p. 150, *supra*.

<sup>28</sup> (1895), 5 O. & H. 37, 38.



“that the expenses of that meeting, and the expenses incurred after that date to promote Mr. F.’s candidature, were election expenses, and that there was a neglect to comply with the requirements of the statute in not returning those expenses.”

In *Lancaster*,<sup>29</sup> a year later, Pollock, B., said:—

“I must say, with all who have gone before me in giving judgment upon this point, the statute does not state when the election begins. It says many things as to the appointment of an agent and the incurring of election expenses, which might point, with the words ‘or management of the election,’ to this meaning—that the election did not commence until there was an actual election, and an election agent actually appointed; but the judges have not accepted that construction. The judges have very properly rejected it, and they have said, ‘We can go behind that and start from an earlier date; but still it is entirely a matter, I will not say of discretion, but of sound judgment, to say how far you may go back. . . . Now, I want to say one word about the case we had before us the other day at Lichfield, because we found there that the election had commenced at some period many weeks, at any rate, before the election itself. But we found that fact because a person who was an absolute stranger to the district, who lived at a distance, but who had a considerable command of money, commenced his connection with the district by sending forward an agent, by providing large inordinate sums of money to one or two political institutions and clubs, by running a newspaper, and more than one newspaper, at his own expense, and then, when that had been so for a certain time, coming himself and saying, ‘I am your candidate.’ I hold, and I should always hold, when a man puts himself in that position, although it may be some time before the election, that he cannot be heard to say that the election has not begun.”

In the same case<sup>30</sup> Bruce, J., laid down the law as follows:—

“No definition and no definite rule can be laid down as to the time when an election begins. The Legislature has not fixed any definite period, and I think it is not for the judges to attempt to lay down a general definition which the Legislature has carefully avoided doing. I conceive that Lord Kyllachy, in the late Scotch case, *Elgin and Nairn*,<sup>1</sup> laid down the true rule when he said, ‘I apprehend that the result is that it is left to us as election judges, and it becomes our duty, to consider each case with respect to its own facts, and to say in each case whether or not special circumstances exist requiring us to hold that the election began prior to what I may call the normal period’; and so Lord McLaren says, ‘It is impossible to lay down any definite term or to deal with

<sup>29</sup> (1896), 5 O. & H. 45, 46.

<sup>30</sup> *Ibid.* 50, 51.

<sup>1</sup> (1895), 5 O. & H. 12.

this otherwise than as a question of fact, in which the general political history of the period and the conduct of the individual candidate are both to be taken into account.' And so Hawkins, J., in the *Walsall* case,<sup>2</sup> 'The commencement of agency must be determined in each case by the particular circumstances of the case, . . . but the limit of time is not the only question to be considered. Even after a person has become a candidate, he is only liable to return expenses incurred in the conduct or management of the election. The question of the time of the commencement of the candidature is only one element to be considered.'

The second of the heads to which the provisions (a) and (b), set out on p. 161, *supra*, have no application is contained in the proviso to sect. 28. "By this proviso," said Cave, J., in *Norwich*,<sup>3</sup> "the section is not deemed to apply to any sum disbursed by any person out of his own money for any small expenses legally incurred by himself. To my mind, the proviso is meant to apply to such small payment as the hire, for instance, of a cab by a canvasser in order to go round canvassing (where no use is made of it for the purpose of taking any voter to the poll), or for telegrams or postage, where the payer is not, and does not intend to be, repaid. It is not intended, to my mind, to apply to so large a sum as £20, although it might perhaps cover the purchase and distribution of half-a-crown's worth of cartoons, or any small expense of that kind which is not forbidden by the Act, and which a person who is not an agent might legally incur."

"Only such expenses," therefore, "are excepted by the proviso as are (1) small; (2) legal; (3) incurred by the party paying them himself; and (4) not repaid to him."<sup>4</sup>

NOTE 10.—*The expression illegal practice includes . . . making or publishing a false statement of fact in relation to the personal character or conduct of a candidate, for the purpose of affecting his election.* This offence was created by the Corrupt and Illegal Practices Prevention Act, 1895. "Although the old common law of libel was analogous, this statute created a new offence with regard to election law. Although in some sense it may be said that the words in this section are not so wide as in the common law of libel, in some sense they are wider, and there can be no doubt that words, although they did not impute bad conduct against the candidate, still might come within the meaning of this Act."<sup>5</sup>

"Any false statement," said Pollock, B., in *Sunderland*,<sup>6</sup> "whether charging dishonesty or merely bringing a man into contempt, if it affects, or is calculated to affect, the election, comes

<sup>2</sup> (1892), 4 O. & H. 125.

<sup>3</sup> (1886), 4 O. & H. 89.

<sup>4</sup> *Per* Cave, J., in *Ipswich* (1886), 4 O. & H. 73.

<sup>5</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. 104. See also *North Louth* (1911), 6 O. & H. at pp. 166, 171.

<sup>6</sup> (1896), 5 O. & H. 62.

within the Act. I would give two illustrations that have occurred to my mind as showing the meaning of this. Some perfectly innocent acts may be done by people, and yet they may come, if they are stated to be done in this way, within the Act. Supposing any gentleman in a county constituency was to say of his adversary that he had shot a fox, and he said it for the purpose of working upon the minds of the constituency during an election, that would certainly come within the meaning of the Act. Again, if any person in a constituency, where one of the members was a temperance man, were to say that he had seen him drinking a glass of sherry—a perfectly innocent act—that would also bring him within the Act. . . .

“In the present case, if one were not to look beyond the present words I should say, speaking for myself, that I should consider very carefully before I held that such words as a man paying ‘wretched wages,’ a man having ‘cleverly shelved,’ or being ‘forced to do’ a particular thing, or having sheltered himself under a ‘Radical shuffle’ were facts which would bring the person who used them within the Act; but I certainly should not let the man who used these words go scot free unless I had carefully considered all the surrounding circumstances, such as who used them, to whom he used them, the meaning they were supposed to bear, and all the other circumstances of the case.”<sup>7</sup>

*In order to come within the Act, four conditions must be fulfilled:—*

(1) *There must be a statement of fact as opposed to an expression of opinion.*

“As to what is a statement of fact,” said Pollock, B., in the case last cited,<sup>7</sup> “I utterly decline to give anything like a definition. . . . In the first place, it is obvious to everybody that a mere argumentative statement of the conduct of a public man, although it may be in respect to his private life, is not always, and in many cases certainly would not be, a false statement of fact.” This was approved by Buckley, J., in *Ellis v. National Union, &c., Association and others*,<sup>8</sup> who added: “The Act was meant to deal with statements of facts as opposed to statements of opinion.” “The Act was not intended to interfere with freedom of speech at elections so long as there was no violation of the provisions of the Act.”<sup>9</sup> “There is one other thing which I am very clear upon,” said Pollock, B., in *Sunderland*,<sup>10</sup> and that is this: that if you quote an article from another paper you make any absolute facts stated in that article a part of your own statement. . . .”

(2) *The statement of fact complained of must be untrue.*

<sup>7</sup> *Sunderland* (1895), 5 O. & H. 62, 63.

<sup>8</sup> (1900), 109 L. T. Journal, 493;  
Times newspaper for October 3, 1900.

<sup>9</sup> *Per* Loreburn, L.C., in *Goodhart*

*v. Marks*, Times newspaper for January 19th, 1906 (C. A.).

<sup>10</sup> *Per* Pollock, B., in *Sunderland* (1896), 5 O. & H. 62, 63.



(3) *The statement of fact must be in relation to the personal character or conduct of the candidate.*

"It is not an offence," said Darling, J., in *Cockermouth*,<sup>11</sup> "to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct of the candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind this statute would simply have prohibited at election times all sorts of criticism which was not strictly true relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct."

(4) *The statement must be made for the purpose of affecting the election of the candidate.*

But even though these conditions are fulfilled, it will be a defence under sect. 2 of the Act if the person making the statement can prove that he had reasonable grounds for believing, and did believe, the statement made by him to be true. Whether he had such grounds and did so believe is a question of fact, and "in each case it must depend upon the character and nature of the information that is given to him.

"If a man procured from some stranger in the street a statement that some person he knew had committed a murder or robbery, and he went and promulgated it without any further inquiry, no one could doubt that he would be within the section, and would not be protected. If, on the other hand, he heard that from two or three highly respectable persons, who must know the truth of it, he would be protected."<sup>12</sup>

By sect. 3 of the Act, any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and for the purpose of granting an interim injunction *prima facie* proof of the falsity of the statement shall be sufficient.

The provisions of sect. 2<sup>13</sup> apparently only apply to criminal or quasi criminal proceedings in respect of the illegal practice, and do not apply to an application for an injunction.

<sup>11</sup> (1901), 5 O. & H. 159, 160.

<sup>12</sup> *Per* Pollock, B., in *Sunderland* (1896), 5 O. & H. 65.

<sup>13</sup> See the sections of the Act set out in full on pp. 353—354, *infra*.

By sect. 4 a candidate shall not be liable, nor subject to any incapacity, nor shall his election be avoided, for any illegal practice under this Act committed by his agent other than his election agent, unless it can be shown that the candidate or his election agent has authorised or consented <sup>14</sup> to the committing of such illegal practice by such other agent, or has paid for the circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court shall find and report that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

The following cases have been decided under the Act.

In *St. George's* <sup>15</sup> the statements complained of were contained in a pamphlet, and in giving judgment, Bruce, J., said: "There is no doubt that the pamphlet in question is within the mischief of the Act of Parliament. The printing and circulation of a document stating that the candidate has been guilty of lying, cowardice, and bribery, pointing at the same time to specific statements, which are alleged to be the lies of which he has been guilty, and suggesting circumstances which showed that, although he was himself the source of lies, he did not dare to promulgate the lies in his own name, but used as his instrument a man who was his lodger, is to my mind the publishing of false statements of fact in relation to the personal character or conduct of the candidate; and if such statements are false, they clearly fall within the Act. In my opinion the pamphlet in question is just the kind of print the publication of which the Legislature intended to visit with severe penalties."

In *Silver v. Benn* <sup>16</sup> a case was stated by a police-court magistrate. The alleged false statements appeared in certain local papers of which the appellant was the editor. They were headed "Foul Play" and "Hitting below the Belt," and asserted that there was a very dark passage in the life of one of the candidates, naming him, and that there was a skeleton in his cupboard which might be exposed. The magistrate found that these statements had been published with the intention of defaming the candidate in question, that they would naturally be understood as imputing discreditable conduct to him, and had been published maliciously, and he fined the appellant £10.

Counsel sought to show that the appellant was excused, under sect. 2 of the Act, on the ground that he believed in the truth of that which he intended to say.

The Court, in dismissing the appeal, said that the passage clearly

<sup>14</sup> See *Sunderland* (1896), 5 O. & H.  
67.

<sup>15</sup> (1895), 5 O. & H. 106.

<sup>16</sup> (1896), 12 T. L. R. 199.

imputed to the candidate something that was discreditable, and that the appellant had been guilty of a gross breach of the statute.

In *Bayley v. Edmunds and others*<sup>17</sup> a paragraph appeared in a local newspaper to the effect that the Liberal candidate, who was a colliery proprietor, had locked his men out of their pits for six weeks, till stocks were cleared out, and coal had reached a fabulous price. "Then," continued the paragraph, "the late member for Chesterfield found his 'conscience' would not allow him to starve the poor miner any longer." The defendants reprinted this paragraph in the form of a leaflet, and distributed it among the electors. The Court of Appeal held that this statement was derogatory to the plaintiff's personal character, and therefore within the Act; that it was published for the purpose of injuring the plaintiff in the election; and, as no attempt was made to prove the charge true, an injunction was granted to restrain the further publication of the leaflet "until the trial of the action, or the election, whichever happens first."

In *Sunderland*<sup>18</sup> a parliamentary candidate caused to be printed and circulated throughout the constituency a leaflet, headed "Election Facts and Fictions," in which he accused his opponent, who was an employer of labour, of paying his men 'wretched wages,' commented on 'the remarkable differences between his practice in dealing with men in his own employ and his precepts when preaching to the employes of other people'; and asserted that he 'meanly took advantage of a slander against his opponent,' 'sheltered himself under a Radical shuffle'; that such conduct was 'hitting below the belt,' &c. Pollock, B., held that these statements were not 'statements of fact' in the sense in which those words were intended by the Act.

In *Ellis v. National Union, &c., Association and others*,<sup>19</sup> during the parliamentary election of 1900, a candidate published a poster, in which he alleged falsely that his opponent was one of a band of 'Radical traitors,' 'who are always found on the side of Britain's enemies, and who were during the summer of 1899 in correspondence with the Boers.' Buckley, J., held that these were not statements of fact within the meaning of the Act.

In *Monmouth*<sup>20</sup> particulars of the contravention of the Corrupt Practices Act, 1895, by the respondent were that by himself or his agents he had made the following charges against Mr. A. S., who was the opposition candidate at the election:—

1. A charge that the said A. S. was a friend of the enemies of England. Printed.

<sup>17</sup> (1895), 11 T. L. R. 537.

<sup>18</sup> (1896), 5 O. & H. 53.

<sup>19</sup> (1900), 109 L. T. Journal, 493;

Times, October 3, 1900.

<sup>20</sup> (1901), 5 O. & H. 171.



2. A charge that the said A. S. lived on the profits of cheap foreign labour, and paid his election expenses out of them, such profits being derived from the labour of Italian workmen employed by him at 9d. a day in competition with British labour, and yet posed as the champion of British industries. Written and printed.

3. A charge that the said A. S. lived on the profits of cheap foreign labour, and paid his election expenses out of them, such profits being derived from the labour of Italian workmen employed at 9d. a day in competition with British labour, and yet posed as the champion of British industries. Printed.

4. A charge that the said A. S. depended for an income upon sweating cheap foreigners, and that the firm of which he was a member had closed their paper mills at Walthamstow and removed them to Italy because they could get starving Italians for a wage of 9d. a day; and that the said A. S. was a capitalist who sweated men and women for a wage of 9d. a day. Printed.

5. A charge that the said A. S. lived well off in London on money entirely derived from foreign goods which he imported to compete with British labour, a good deal thereof being made in Italy by workmen who worked for a wage of 9d. a day. Oral and printed.

6. A charge that the said A. S. dealt in paper made by starving Italians paid at the rate of 9d. a day. Oral and printed.

7. A charge that the said A. S. supplied information and ammunition to the enemies of England. Printed.

8. A charge that the said A. S. paid Italian workmen 9d. a day for making paper for him. Printed.

9. A charge that the said A. S. was a supporter of Mr. Kruger. Printed.

It appeared that charges had been made by persons in the interest of Mr. S. against the respondent that he had treated with cruelty coolies employed by him in South Africa, and in retaliation the Respondent had written a letter to the *South Wales Daily Telegraph*, making some of the charges against the respondent. Mr. C., the editor of that paper, reiterated the charges and commented upon them in a leading article. Both the Respondent and Mr. C. swore that they believed the charges to be true at the time, but that they subsequently discovered that they were unfounded.

Kennedy, J., in giving judgment,<sup>20</sup> said: “. . . In this case we have come to the conclusion that we cannot exonerate the Respondent. It is our opinion that there has been by him a violation of this statute in the statements which he made, and which he published for the purpose of affecting the return. We agree that on the facts before us Mr. S. has himself and his supporters to thank, to some extent, for the attacks to which the Respondent gave

<sup>20</sup> (1901), 5 O. & H. at pp. 173—174.

expression. . . . But the fact that he or his supporters may have acted wrongly or unwisely in their attacks, is no sort of protection or answer in the view of the law under this section for the person who has been (as we think the Respondent has been in this case) guilty of publishing these statements, within the meaning of the section which I have read, derogatory to the character or conduct of his opponent; not being, in our opinion, protected by having any reasonable ground for believing them to be true. . . ."

The Court declared the election void.<sup>20</sup>

In *Attercliffe Division*,<sup>21</sup> the statements of which complaint was made were published in a circular issued on behalf of the respondent on the morning of polling day. The circular, which was set out in full in paragraph 5 of the petition, was as follows:—

### WORKING MEN!

Read this before you vote!

1. Who embarrassed Sir J—— J—— (D——'s great benefactor) on the King's visit last July?

Not B—— L——

2. Who showed disrespect to our King by appearing uninvited at the Lord Mayor's luncheon in the uniform of a cut-throat Government?

Not B—— L——

3. Who hounded —— to prison?

Not B—— L——

4. Who worked night and day to get him out of prison, and got nearly forty Members of Parliament to petition the Tory Home Secretary for his release?

B—— L——

5. Who said he was going into the City Council to check the growing power of the Labour Party?

Not B—— L——

6. Who approved of the bringing into South Africa of 50,000 shilling-a-day Chinamen who are taking the bread out of the mouths of British workmen?

Not B—— L——

7. Who is the friend of the widows?

B—— L——

8. Who pays top wages to his workmen?

B—— L——

9. Who has served you well for 11 years in Parliament, and never given a vote against the interests of labour?

B—— L——

<sup>20</sup> (1901), 5 O. & H. 174.

<sup>21</sup> (1906), 5 O. & H. 218.

10. Whom do all the labour leaders recommend you to vote for?

B—— L——

11. Whom shall you vote for? Why, of course,

B—— L——

Mr. B—— L——, who was the respondent, took out a summons to strike out paragraph 5, sub-sections 4 to 11, on the ground that they disclosed no ground for a petition within the Corrupt Practices Acts.

It was ordered by Grantham, J., that sub-sections 8 to 11 should be struck out.

At the trial the petitioner appeared in person, and argued that the circular contained untrue statements as to his conduct and character. In particular the expression "hounded" implied that he had been guilty of discreditable conduct. He cited the *St. George's*<sup>22</sup> and *Monmouth*<sup>23</sup> cases, and *Silver v. Benn.*<sup>24</sup> He tendered himself as a witness, and called other evidence.

At the close of the petitioner's case the Court did not call upon counsel for the respondent to address them.

Grantham, J., in delivering judgment, said<sup>25</sup>: "This is not a kind of petition which has been often brought. . . . ."

"The petitioner in the first instance made practically eleven charges in his petition, and application was made to me in chambers to strike out a great many of them, but I said that it was not the duty of a judge at chambers to hear the whole of the petition and to determine what should be the first question for the judges to try. With regard, however, to four of the charges, it was quite obvious that they were not within the Act, therefore I at once struck them out. I allowed the others to stand, but we have no doubt that charges 1, 2, 5, 6, and 7 are none of them charges in reference to false statements of fact in relation to the personal character or conduct of a candidate. It is a great pity that in elections at the present time so many false statements are made, and that votes are obtained in that way. But we cannot go beyond the language of the Act, which is limited to false statements made with reference to the personal character or conduct of the candidate, leaving him therefore to be still exposed to unfriendly attacks with regard to his political views. But if his opponent goes beyond that and makes false statements of fact with regard to the private conduct of his rival, then the Legislature has said that it is an illegal practice, which will vitiate the election. Now, having very carefully considered all that has been said by the petitioner, we have both of us come to the conclusion that the statements contained in eight of the charges are not the sort of statements which

<sup>22</sup> (1895), 5 O. & H. 106.

<sup>23</sup> (1901), 5 O. & H. 167.

<sup>24</sup> (1896), 12 T. L. R. 199.

<sup>25</sup> (1906), 5 O. & H. at pp. 220—222.



were aimed at in the passing of this Act in the year 1895. They are undoubtedly statements which in the mind of many people would be injurious to the petitioner's candidature, and nobody can doubt but that the main object of those who published them was to prejudice the petitioner in the eyes of the electorate. The circular was issued as a parting shot against the petitioner, at a time when it was impossible for his side to reply to it. Whether it did affect the election or not we do not say, because in the view we take we have not to determine that question. What we have to decide is practically reduced to this one question: Were those acting for the respondent justified in making the accusation conveyed in the words, 'Who hounded C—— H—— to prison?' Morally speaking I should say no, but legally speaking I cannot help saying that I do not think that it is within the Act. There can be no doubt but that the prosecution of H—— was a perfectly just and proper prosecution, and there can be no doubt that if it had not been for the legal advice of the petitioner, I might almost say the pertinacity of the petitioner, this prosecution would have fallen through. I think that it would have been a great public misfortune if it had done so, because everyone is interested in purifying corporations of corrupt transactions of this kind, which are disastrous to the public life of the country. The petitioner was perfectly justified in the course of action which he took with regard to the matter.

"Well, I think that if the petitioner had had nothing at all to do with it, and the whole thing had been false, the respondent would have lost his seat. But that is not the case. The petitioner took a leading part in the prosecution, he acted as agent for the Public Prosecutor, and although he did not appear himself, he was quite ready and anxious to do so; he was instructing counsel, and he, by his legal knowledge and activity, kept the matter running on till ultimately it landed H—— in prison. That being so, can it be said that it is necessarily a false statement of fact that he hounded him to prison? We have to act as judge and jury, and we have to exercise our own knowledge as to the use of the word 'hounding.' There is no doubt that he 'pressed' the matter on, that he 'egged' it on. That being so, can we say that it is a false statement of fact in relation to his personal conduct to ask the question, 'Who hounded C—— H—— to prison?' . . . . .

"If instead of using the word 'hound,' they had said that he 'egged on' the prosecution, that would have been true, and therefore it seems to me that to say 'Who hounded C—— H—— to prison?' is not a statement of fact which was false to the knowledge of the person making it."

In the same case Walton, J., said <sup>24</sup>:—

<sup>24</sup> (1906), 5 O. & H. at pp. 223, 224.

“ We have come to the conclusion without any doubt that the statements set out in paragraphs 1, 2, 5, 6, and 7 are clearly not within the statute. With regard to the statements and imputations contained in paragraphs 3 and 4 we have felt that they required very serious consideration, and it appears to us that for the purpose of deciding this case the important question to consider is, what is the interpretation involved in these two paragraphs? In this case there is no statement in the nature of the disclosure of some private scandal in what one might call the secret life of the candidate. Paragraphs 3 and 4, to my mind, relate obviously to public acts and to public conduct only. I do not say that they may not be within the Act, but it is clear that they must be read by everybody to relate to certain public acts and conduct of the petitioner perfectly well known to everybody who takes any kind of interest in public affairs in Sheffield. . . .

"I think that, put quite shortly, the meaning of the two paragraphs is that in the matter of the prosecution the petitioner was H——'s enemy, and that the respondent was H——'s friend. I think that is really the whole imputation on the petitioner contained in these two paragraphs. To put it in another way, that he was the person who by his energy and pertinacious efforts had succeeded in getting H—— sent to prison, whereas the respondent was the man who had worked hard to get him out of prison. In my opinion that is not a false statement within the meaning of the Act of Parliament."

The Court declared the respondent duly elected, and dismissed the petition.

The petitioner asked that the Court should state their decision in the form of a special case, with a view to an appeal.

The Court refused the application, on the ground that their decision did not involve the interpretation of the Act.

In *North Louth* <sup>25</sup> the statements complained of, which were contained in a letter to the Press and in leaflets extensively circulated, accused the unsuccessful candidate of place hunting and corruption. It was proved that the successful candidate's election agent circulated the newspaper and leaflet, and the election was declared void upon this, amongst other, grounds.

ART. 27.—Illegal Payment.

*A person is guilty of illegal payment who:—*

(1) Knowingly provides money for any payment contrary to the provisions of the Corrupt Practices Act, 1883, or for any expenses incurred in excess of any maximum amount allowed by the said Act, or for replacing any money expended in any such payment or

<sup>25</sup> (1911), 6 O. & H. 103, at pp. 154, *et seq.*

expenses, except where the same may previously have been allowed as an exception.<sup>26</sup>

(2) *Corruptly induces or procures any other person to withdraw from being a candidate at an election in consideration of any payment or promise of payment, or so withdraws in pursuance of such inducement or procurement.*<sup>27</sup>

(3) *Pays or receives payment or contracts for payment, before, during, or after an election, for the purpose of promoting or procuring the election of a candidate at any election, on account of bands of music, torches, flags, banners, cockades, ribbons or other marks of distinction.*<sup>28</sup>

NOTE 1.—*Knowingly provides money for any payment contrary to the provisions of the Corrupt Practices Act, 1883, or for any expenses incurred in excess of any maximum amount allowed by the said Act, or for replacing any money expended in any such payment or expenses, except where the same may previously have been allowed as an exception.* The expression 'payment' includes any pecuniary or other reward.<sup>29</sup> Thus refreshments, even if they only consist of a pork pie, a sandwich, and a cup of coffee, may be payment.<sup>30</sup> As to the maximum amount allowed, see p. 151, *supra*.

NOTE 2.—*Corruptly induces or procures any other person to withdraw from being a candidate at an election in consideration of any payment or promise of payment, or so withdraws in pursuance of such inducement or procurement.* 'A candidate at an election' in this provision means any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued.<sup>1</sup>

NOTE 3.—*Pays or receives payment or contracts for payment, before, during, or after an election, for the purpose of promoting or procuring the election of a candidate at any election, on account of bands of music, torches, banners, cockades, ribbons or other marks of distinction.*

In order rightly to understand the object of this provision, it is necessary to some extent to consider the history of this branch of the law. "I should like," said Pollock, B., in *Walsall*,<sup>2</sup> "to refer

<sup>26</sup> Corrupt Practices Act, 1883, s. 13.

<sup>27</sup> *Ibid.* s. 15.

<sup>28</sup> *Ibid.* s. 16.

<sup>29</sup> *Ibid.* s. 64.

<sup>30</sup> *Barrow-in-Furness* (1886), 4 O. & H. 80.

<sup>1</sup> Corrupt Practices Act, 1883, s. 64. It is clear that the wider meaning of "candidate" referred to on pp. 149, 150, *supra*, is not applicable here.

<sup>2</sup> (1892), *Day's Election Cases*, 110—111.



shortly to what was the law, and the spirit of the law, upon this matter. This is no new thing, because as far back as 1854, the 17 & 18 Vict. c. 102, s. 7, provides this: 'No candidate before, during, or after any election shall, in regard to such election, by himself or his agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city or borough, or place for which such election is had, any cockade, ribbon or mark of distinction.' There you have the Legislature denoting that they will discourage, by penalty, any mark of distinction, and for an obvious reason.<sup>3</sup> It is not because a ribbon is blue, or any other colour, or because a cockade is more or less showy, that it is objectionable; it is because it is a party badge. Everyone who knows anything of the history of elections knows that whatever may be the virtue of the people, if they are got together in the spirit that they are banded against each other, and that banding against each other is encouraged by marks of distinction, you will always have more or less disturbance according as that spirit is encouraged. That being so, when the more recent Act was passed, the Legislature endeavoured to extinguish this mischief by preventing, not only the ordering of such badges, or the wearing of them, but the paying for them by the candidate or his agent."

In *Walsall* <sup>4</sup> 2,000 cards bearing the respondent's portrait and the words 'We're bound to win,' 'Play up Swifts,' 'Vote for James,' and 2,000 similar cards on stout paper, were printed by the printer, who was employed by the respondent, in the respondent's colours. They were described as cards for hats, and were made for that purpose, and were in fact largely worn in the hats of the respondent's supporters. They were ordered by the secretary of the Licensed Victuallers' Association, but were charged to the 'election account,' and were paid for by the election agent. The respondent and his agent admitted that they knew of the use of and payment for the cards, but relief was asked in respect of them under sect. 23 of the Corrupt and Illegal Practices Prevention Act, 1883, on the ground of inadvertence.

The Court held the election void, on the ground that the use of the hat cards was an illegal practice, from the consequences of which it would not be right to relieve the respondent.

"The cards which were printed," said Pollock, B.,<sup>5</sup> "were not merely the card of invitation as of old, but bore the photographic likeness of the candidate and words of invitation and encouragement to fight for him. In themselves they cannot be found fault with as being within the Act of Parliament under the words 'marks

<sup>3</sup> But see the reason given by Cave, J., in *Stepney* (1892), 4 O. & H. at pp. 179—180.

<sup>4</sup> (1892), 4 O. & H. 126.

<sup>5</sup> *Walsall* (1892), 4 O. & H. 127, 128.

of distinction,' and so long as cards alone are used there could be no objection. I may even go further, and say that sometimes the cards may be put in a man's coat or fixed to the outside of his hat, and yet not necessarily be 'marks of distinction.' But if the cards is made specially adaptable to place in the hat, as these cards were in fact, and if they were used for that purpose, then after being ordered, having been used, and having been so described in the account, the person who pays that account pays it knowing what it is. . . . The Legislature has decided to prohibit any marks of distinction and any party badge from being supplied and paid for by candidates or their agents."

Hawkins, J., said <sup>6</sup>: "There is no doubt at all that these cards were intended to be worn, and were in fact worn, in the hats of many of the partisans of Mr. J., on the day of the election. The cost of these cards was included by the election agent, Mr. J., in his accounts, who most frankly told us that he knew they had been so used. That these cards were "marks of distinction," I cannot entertain a doubt; they were worn to mark the partisanship of the wearer with the candidate whose portrait was depicted upon it, and to invite and enlist others to join in the same cause. In truth, they were intended to serve the purpose of cockades, and the only real difference between the cards and cockades is that cockades were worn on or about the level of the crown of the hat, whereas the cards were worn in the hat-band. Worn as cockades are worn, it would be difficult to say they were not actually cockades; at least, they were marks of distinction. . . . There were 4,000 cards paid for, many of which had been used during the election in flagrant disobedience of the law. . . . For this illegal practice relating to the hat cards, from which the candidate has not been relieved, I think this election must be declared void."

In *Pontefract* <sup>7</sup> a question arose as to whether certain yellow cards which had been extensively worn were marks of distinction. The Court did not agree as to whether these cards were marks of distinction or not, and Hawkins, J., said: "I wish to correct an erroneous impression which may exist with regard to the decision in the *Walsall* petition. The cards in use at Walsall were obviously marks of distinction, and I may add that I came also to the conclusion that they were simply cockades in another form. They were purposely made to be worn in the hat, they were ordered for that purpose, and were so used and worn in the presence of those who were undoubtedly agents for the sitting member, and were paid for with the knowledge of the use to which they were put. Under those circumstances it was absolutely impossible not to say

<sup>6</sup> *Walsall* (1892), 4 O. & H. 127, 128.  
Day's Election Cases, 114, 115.

<sup>7</sup> (1893), 200, 201.

that the payment for those cards was an illegal payment, whether they are called cockades, or whether they are denominated only as marks of distinction."

In the *East Clare* petition a question arose as to whether canvassing cards, that is, cards inviting the recipient to vote, were marks of distinction within the meaning of sect. 16. It was proved that these cards had been largely worn in the hats of the respondent's supporters. O'Brien, J., said<sup>8</sup>: "The cards, in my opinion, were not marks of distinction within the meaning of sect. 16—they were canvassing cards, cards inviting the recipient to vote, and were not intended to be worn or used as badges. The *Walsall* case<sup>9</sup> expressly declared such cards to be innocent. In my opinion the *Walsall* case<sup>9</sup> has gone to the extreme verge of the law, and it would be most undesirable to carry it further. No doubt such cards as these might be used as marks of distinction, but what is forbidden by the Act is the use of badges or marks of distinction which are made for the purpose and intended to be used as such. In the *Walsall* case<sup>9</sup> the cards were expressly described as hat cards, and were adapted for placing in the hat, and bore the candidate's portrait; that is not so here. These cards had a different use altogether, and the fact that another use was made of them than that for which they were supplied does not, in my opinion, render them illegal, unless there be some specific evidence from which the Court may draw the inference that such illegal use was intended by those supplying them."

As to what constitutes 'a banner' within the meaning of the Act, it was held in *Stepney (Borough)*<sup>10</sup> that broad strips of canvas with the words 'Isaacson for Stepney' upon them, which had been paid for by the respondent's election agent, and had been stretched across different streets throughout the constituency, came within this description.

Cave, J., said<sup>10</sup>: "I am clearly of opinion that these canvas advertisements, as they have been called, are banners, and nothing else. In order to get them made they go to a man who describes himself as a 'flag and banner maker'; they are described in the bills which are sent in as banners, and if you were to put a stick at each end of the canvas and set two men to carry it along the street, no one could doubt that it would be a banner to all intents and purposes."

Vaughan Williams, J., in concurring, said:<sup>11</sup> "My view is this . . . if you read the words of the earlier Act, 17 & 18 Vict. c. 102, s. 7, and remember that the 16th section of the Corrupt and Illegal Practices Act, 1883, does not repeal that section, but only adds to it, I think that one is bound to hold that a banner, to

<sup>8</sup> *East Clare* (1892), 4 O. & H. 163.

<sup>9</sup> (1892), 4 O. & H. 123.

<sup>10</sup> *Ibid.* 179.

<sup>11</sup> *Ibid.* 181.



come within the operation of those two sections, must be a banner used as a mark of distinction.

"I think it is perfectly plain with regard to many of these banners, that they were used as marks of distinction, and, when banners are so used, I do not doubt but that they come within the section and that any payment for them is illegal. Let me give one concrete example of what I mean. Supposing you had a committee room, and from out of the window of that committee room was hung an announcement either in the shape of a flag or in the shape of a banner, to inform people that that room was the committee-room of the candidate, I do not think, or, at all events, I should hesitate much to find, in that case, that the user of that flag or banner was a matter the payment for which would come within this section, because in such a case the flag or banner is not used as a mark of distinction. But in this case it seems to me that the banners were used as marks of distinction, and for that reason I entirely agree with the conclusion of fact at which Mr. Justice Cave has arrived."

In *St. George's*<sup>12</sup> it was proved that from 500 to 1,000 portraits of the petitioner had been printed on linen, and had been furnished with a lath at the top and bottom. It was contended that this was done in order that they might be nailed and not pasted to walls; but there was evidence to show that they had been carried about on sticks by boys and others, and that they had been suspended by strings across streets with the knowledge of the petitioner. There were also strips of linen with the words "Vote for Benn" stretched across some streets in the constituency. The petitioner paid for the portraits and for fitting the laths to them.

"It is clear to my mind," said Pollock, B.,<sup>13</sup> "that the words 'marks of distinction' are not limited to the last two words preceding them, 'cockades and ribbons,' but that flags and banners also may be marks of distinction. That was clearly the opinion of my brother Vaughan Williams,<sup>14</sup> when he said he thought a mere Union Jack, or a notice, 'This is the Radical Committee Room,' would not be contrary to the Act, because such a banner would not be used as a mark of distinction; and therefore I think that a banner, or anything like it, may be a mark of distinction: and, to my mind, it is absolutely clear that whatever may have been the intention or the idea of the person who ordered them, these large photos, some printed on linen and some on paper, in themselves were marks of distinction."

The objects of this section are—(1) to prevent unnecessary expenditure;<sup>15</sup> (2) to prevent a candidate gaining a false show

<sup>12</sup> (1895), 5 O. & H. 107.

& H. 181.

<sup>13</sup> *St. George's* (1895), 5 O. & H. 109.

<sup>15</sup> *Per* Cave, J., in *Stepney* (1892),

<sup>14</sup> In *Stepney (Borough)* (1892), 4 O.

4 O. & H. 179, 180.

of popularity by laying out his money on flags, banners, ribbons, cockades, and things of that kind <sup>15</sup>; (3) to preclude marks of distinction which might lead to a fight.<sup>16</sup>

In *Stepney Division* <sup>17</sup> it was proved that a voter was paid 5s. for the loss of a hat at a public meeting, and the return of election expenses showed the payment in specific terms. It was contended by counsel that this was an illegal payment, inasmuch as it was not within the payments authorised by Schedule I., Part II., of the Corrupt Practices Act, 1883, although he admitted that no section of the Act in precise terms made all payments, except those in the schedule, illegal.

The Court refused, in the absence of any authority upon the point, to hold the payment illegal, and the vote stood. In the same case it was proved that payment was made to a voter for repairs done by him to the roof of a house which had been damaged by reason of ropes having been attached to it for the purpose of suspending a banner across the street. The Court held that this was not an illegal payment, and Field, J., said <sup>17</sup>: "I think this was not within the meaning of the Act. The words of the 28th section are 'on account of bands of music, torches, flags, banners,' and so on; but surely the banner was lawful, because there is no proof that there was any payment made for it, and the banner caused the injury. If the contention for the petitioner is right, the hole in the roof must never be repaired, or the voter must do it himself. This vote must stand."

In *Hexham* <sup>18</sup> certain payments on account of bands had been made before the election had begun. In dealing with the objection to these payments, Cave, J., said: "I think that is a misconceived objection altogether. Payment on account of a band is illegal, *as soon as the election has begun*, but up to that time I do not find anything that makes it illegal. If it is part of an entertainment the whole thing of course may be treated together for the purpose of showing what was the intention of the people who got up the entertainment . . . but the mere paying of a band before the election has begun is, in my judgment, not one of those things that are hit by the Act."

#### ART. 28.—Illegal Employment.

*A person is guilty of illegal employment who for the purpose of promoting or procuring the election of a candidate at any election engages or employs, or is for the said purpose engaged or employed*

<sup>15</sup> *Per* Cave, J., in *Stepney* (1892), 4 O. & H. 180.

<sup>16</sup> *Per* Pollock, B., in *St. George's* (1895), 5 O. & H. 108; *contra* Cave, J.,

in *Stepney (Borough)* (1892), 4 O. & H. 179.

<sup>17</sup> (1886), 4 O. & H. 39.

<sup>18</sup> (1892), Judgments, 9.

by, any other person for payment or promise of payment for any purposes, or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to the Corrupt Practices Act, 1883, or except so far as payment is authorised by the first or second parts of the said schedule or otherwise by the said Act.<sup>19</sup>

NOTE.—This provision is contained in sect. 17 of the Corrupt and Illegal Practices Prevention Act, 1883. “Sect. 17 has two branches, the first as to the persons to be employed (Part I. of the schedule), the other as to the expenses to be incurred (Part II. of the schedule).”<sup>20</sup>

Part I. of this schedule contains a list of persons who can be legally employed for payment. They are as follows:—

- (1) One election agent;
- (2) In a county, one deputy election agent (in the Act referred to as a sub-agent) for each polling district;
- (3) One polling agent in each polling station;
- (4) (a) in a county, for the central committee room, one clerk and one messenger, if the number of electors in the county does not exceed 5,000, and an additional clerk and messenger for each additional 5,000 or fraction thereof; (b) in a county, for each polling district, or in a borough, one clerk and one messenger, when the number of electors in the polling district or borough does not exceed 500, and an additional clerk and messenger for each additional 500 or fractional part thereof. Where a county or borough is divided, each division is considered a separate constituency.

Part II. contains a list of legal expenses in addition to expenses under Part I. These are as follows:—

- (1) The personal expenses of the candidate (see p. 139, *supra*);
- (2) The expenses of printing and advertising, and the expenses of publishing, issuing, and distributing addresses and notices. In *Barrow-in-Furness*<sup>21</sup> it was held that “addresses and notices” cover bills;
- (3) The expenses of stationery, messages, postage, and telegrams;
- (4) The expenses of holding public meetings;
- (5) In a borough, the expenses of one committee room; and if the number of electors exceeds 500, of one for every complete 500 electors, and of one additional for the remaining fraction, if any, over 500; in a county, the expenses of a central committee room, and of one for each polling district, and if the number of electors in a polling district exceeds 500, of one for every complete 500 electors over and above the first 500.

<sup>19</sup> Corrupt Practices Act, 1883, s. 17.

<sup>20</sup> *Per* Field, J., in *Stepney Division* (1886), 4 O. & H. 54.

<sup>21</sup> (1886), 4 O. & H. 78; *cf.* *Stepney*

*Division*, *ibid.* 52, 54, 55, where the members of the court differed on this question.



Part III. of Schedule I. further authorises expenses in miscellaneous matters other than those mentioned above, not exceeding £200.

Lastly, sect. 48 of the Act authorises conveyance of voters by sea in certain cases.

Some of these expenses enumerated above necessitate the engagement or employment of certain persons, and in such cases, unless otherwise illegal, the person so engaging or employing, and the person so engaged or employed, are legally justified.

In *Elgin and Nairn*<sup>22</sup> it was proved that M. had been appointed one of the respondent's polling agents, and had been paid seventeen guineas for his services. M. was acquainted with most of the voters in the district, and he admitted that both on the polling day and previous to it he had urged voters to vote. Counsel contended that he was substantially a sub-agent, and that his appointment was a breach of sect. 17 of the Act of 1883.

The Court decided against this contention, and in giving judgment Lord McLaren said<sup>23</sup>: "The objection is, not that the total number of salaried agents authorised by the statute was exceeded, but that while, *ex facie* of the letters of appointment, Mr. G. had no more agents of the various classes than the statute authorised, yet the persons were employed and paid nominally in one capacity, but with the intention, and, I suppose, under contract, that they should render services in another capacity.

"The enactment that is said to have been violated is sect. 17 of the Act of 1883, and that section prohibits the engagement or the employment for payment for any purpose or in any capacity, except for any purposes or capacities mentioned in the First and Second Schedules thereof; the persons who may be employed as enumerated in the schedule are an election agent, who has the supervision of the candidate's affairs generally, and then for each district there may be a sub-agent, a polling agent, a clerk, and a messenger. The duties of these officers are not very clearly or strictly defined. I do not think there is any definition of the duties of a sub-agent, but it sufficiently appears that he is a person through whom payments may be made at the request of the principal agent. In all other respects his agency seems to be perfectly general . . . a polling agent is a person who is to represent a candidate in the polling booth to detect personation. . . . The general and leading purpose of sect. 17, I think, is to keep down expenditure by prohibiting the employment of a larger number of persons than are mentioned in the schedule.

"It may very well be that the clause would also prohibit the employment for money of an agent to perform additional duties to

<sup>22</sup> (1895), 5 O. & H. 13.

<sup>23</sup> *Ibid.* 13, 14, 15.

those which are indicated by his name or by his description; but in order to invalidate an election because an agent has performed duties additional to those for which he is expressly engaged, it would be necessary, at least, that we should have a case very clearly proved; and it is evident that it would always be extremely difficult to establish a case of that description of colourable employment of a man in one capacity in order that he might perform duties in another capacity. . . . As I read the Election Acts, the employé is in no way inhibited from using his personal exertions as an elector to influence the votes of other electors; nor, so far as I see, is there any restriction on the right of a paid agent or officer to render services to the candidate such as he may think fitting, except that he cannot be employed in the payment of election expenses unless he is the sub-agent."<sup>23</sup>

In *Lichfield*<sup>24</sup> Pollock, B., said: "It was fairly admitted by counsel that some of the persons who were employed as clerks had acted as canvassers. The question, therefore, is whether that was done honestly or was culpable. It is not because a man, who is employed to act as a clerk for only part of the day, or for some possibly trivial or small matters, such as the directing of envelopes, or what-not; it is not because he occupies that time which is his own that he is to be robbed of the ordinary right of a citizen to go about and take an interest in an election where he cares for the politics involved, and to canvass. The question, therefore, in this case, as in others, is: Was there a canvassing either by the direct direction of the sitting member or his agent, or by their knowledge, in the sense that they not merely knew that there was canvassing done, in fact, by that election agent, but that the canvassing was such that the fair assumption would be that it was illegal? As to that I entirely agree with the judgment in the *Elgin* case."

Where persons are *bonâ fide* employed in a manner not forbidden by the law, *e.g.*, to take out and deliver bills, this will not make them messengers. On the other hand, if their employment in regard to the bills is a mere device to evade the provisions of the Act as to the number of messengers who may be employed, the employment would be illegal. The same observations apply to the employment of persons who are legally employed for any purpose, and who happen to be employed to do copying work. This does not make them clerks unless the employment is colourable, and for the purpose of evading the Act.

In the words of Cave, J., in *Pontefract*<sup>25</sup>: "The number of clerks, that is to say, the persons who attend upon the committee, is limited. The number of messengers who are supposed to go on

<sup>23</sup> *Elgin v. Nairn* (1895), 5 O. & H. 13, 14, 15.

<sup>24</sup> *Ibid.* 28.

<sup>25</sup> (1893), *Day's Election Cases*, pp. 129, 130.

messages from one committee room to another, or to fetch a particular individual who happens to be wanted, is also limited. On the other hand, mere clerical work has not in every case to be done by clerks; but obviously, if they have other duties, you may employ persons who give themselves out for doing clerical work to do it, and the mere fact that they are employed to do clerical work, in writing addresses, copying out documents, or things of that kind, does not at all, in my judgment, necessarily make them clerks; nor again, if other persons are employed to take out and deliver bills, does that make them, in my judgment, messengers. In both these cases, no doubt, if there is only colourable employment of these people, if there is an intention of evading the Act, it would bring the offender at once within its provisions."

*Canvassing hand-bills, addresses and notices.*—In *Stepney Division*,<sup>26</sup> in the recriminatory case, it was proved that about twenty men were employed by the petitioner's agent to distribute on the polling day in the neighbourhood of the polling stations handbills, twelve inches long by eight inches broad, headed 'Stepney Election, Thursday, November 26. From 8 a.m. to 8 p.m. Facts worth remembering at the poll.' Then followed six paragraphs containing certain statements about the qualifications of the petitioner to be elected, and concluding thus: 'Mr. I. will be the winning candidate if his friends will poll early and mark their voting papers thus.' Then followed a copy of the ballot paper with the respondent's name in very small letters, and the petitioner's name in very large letters, with an X after it.

Denman, J., said that these bills would be most appropriately described as 'canvassing handbills,' but the judges were divided in opinion as to whether it was an illegal practice or expense to distribute bills of this kind.

In *Barrow-in-Furness*<sup>27</sup> the respondent and his agent had incurred expense and employed people in distributing, posting, or printing documents, which included a letter written by a distinguished statesman to an alderman of the borough and notices 'Vote for Duncan': and the Court, having regard to other parts of the Act, such as sect. 18, held that such expense was not illegal, and that such documents were 'addresses and notices' under Part II. of the First Schedule. The Court intimated, however, that offensive pictures and statements might be illegal.

*Payment of canvassers.*—The payment of canvassers is an illegal payment, and if, under the guise of canvassing for registration, men are sent out by the candidate, his election agent, or sub-agent, to canvass for the election and are paid for such canvassing,

<sup>26</sup> (1886), 4 O. & H. 52.

<sup>27</sup> *Ibid.* 76.



this would be an illegal practice, which would consequently make the election void.<sup>28</sup>

In *Rochester*<sup>29</sup> Cave, J., said: "No less than 300 persons of the lower class of voters have been employed going about with what purports to be a canvassing book, but which appears to have been employed for registration purposes. If they were all paid at 5s., as, admittedly, the man Knight was paid, if they did no more work than Knight did, I should have very little hesitation in coming to the conclusion that the whole of that employment was collusive, and that that was a case of bribery on a very extensive scale. Fortunately for the respondent, that is not the way in which it was put before us in the particulars."

No illegal act is committed, however, if there is only that species of canvassing which is connected with registration, and not that kind of canvassing which attends upon an election.<sup>30</sup>

*Employment of persons to keep order.*—In *Ipswich*<sup>1</sup> it was held illegal to hire persons to keep order at meetings. On the other hand, "there can be no objection to the employment of unpaid volunteers to put down disturbances, and where any serious disorder is apprehended it may be a wise proceeding to swear in such volunteers as special constables."<sup>2</sup>

"If a man were so obnoxious to his fellows that they could not resist the desire to fall upon him and do him an injury whenever they met him, even if it were at a public meeting at which they would otherwise have behaved themselves in an orderly manner, he would not be guilty of an illegal practice if he were to pay men to protect him."<sup>3</sup>

*Payment may be in kind.*—In *Barrow-in-Furness*<sup>4</sup> it was proved that at a meeting summoned by the election agent for the respondent, at which about 400 persons were present, it was agreed, with the sanction of the respondent and the election agent, to provide refreshments on the polling day, at the expense of the respondent, for 441 persons who were designated "workers," and who were to take an active part in the election on behalf of the respondent. Of the persons who partook of the refreshment 226 were voters. The refreshments consisted of a pork pie, a sandwich, and a cup of coffee for each person, and were distributed in the various committee rooms.

The Court held that there had been illegal payment within the meaning of sect. 17 and, as the employment was by the respondent

<sup>28</sup> *Per* Cave, J., in *Stepney (Borough)* (1892), *Day's Election Cases*, 119.

<sup>29</sup> (1892), *Day's Election Cases*, 102—103.

<sup>30</sup> *Per* Cave, J., in *Stepney (Borough)*

(1892), *Day's Election Cases*, 119.

<sup>1</sup> (1886), 4 O. & H. 74.

<sup>2</sup> *Ibid.* *per* Cave, J.

<sup>3</sup> *Ibid.* 72, 73.

<sup>4</sup> *Ibid.* 78—79.

and his election agent, that there had been an illegal practice, and the election was therefore declared void.

*“ Promise of payment . . . in sect. 17 of the Act of 1883, . . . means an actual express promise, and not that the promise may be inferred by the conduct of the parties, which would entitle a man to recover in a civil action.”*<sup>5</sup>

# ART. 29.—Illegal Hiring.

*A person is guilty of illegal hiring who—*

(1) Lets, lends, or employs, for the purpose of conveyance of electors to or from the poll, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal, which he keeps or uses for the purpose of letting out for hire, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll<sup>6</sup>; or

(2) Hires, borrows, or uses, for the purpose of the conveyance of electors to or from the poll, any carriage, horse, or other animal, knowing that the owner thereof is prohibited from letting, lending, or employing it for that purpose<sup>7</sup>; or

(3) Hires or uses as a committee room, for the purpose of promoting or procuring the election of a candidate at an election, or lets, knowing it was intended to use the same as a committee room, any premises or part of any premises,—

(a) On which the sale by wholesale or retail of any intoxicating liquor is authorised by a licence (whether the licence be for consumption on or off the premises); or

(b) Where any intoxicating liquor is sold, or is supplied to members of a club, society, or association, other than a permanent political club; or

(c) Whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises; or

(d) Of any public elementary school in receipt of an annual parliamentary grant;

but the provisions of paragraph (3) (a), (b), (c), (d), above, do not apply to any part of such premises which is ordinarily let for the purpose of chambers or offices, or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.<sup>8</sup>

NOTE 1.—Hires, borrows, or uses, for the conveyance of voters to or from the poll, any carriage, horse, or other animal, knowing that

<sup>5</sup> *Per* Pollock, B., in *Lichfield* (1895), s. 14 (1).

<sup>6</sup> O. & H. 30.

<sup>7</sup> Corrupt Practices Act, 1883,

<sup>7</sup> *Ibid* s. 14 (2).

<sup>8</sup> *Ibid* s. 20.

*the owner is prohibited from letting, lending, or employing it for that purpose.* In *Buckrose*<sup>9</sup> objection was taken to a vote on the ground that the voter had driven to the poll in a cab, paying nothing to the driver; and it was argued that a breach of sect. 14 of the Corrupt Practices Act of 1883 had been committed, and that the voter using the cab was disqualified. There was no proof that the voter knew that the use of the cab was prohibited by law. The Court held that no breach of the section had been committed.

Under the provisions of sect. 7, set out in Article 29, p. 187, *supra* (see also pp. 147—148, *supra*), payment on account of the conveyance of electors to or from the poll is an illegal practice both on the part of the person paying and the person receiving payment. It is not illegal for anyone to lend his own carriage for the purpose of conveying electors to or from the poll, nor for an elector to hire a cab for his own conveyance to or from the poll.

NOTE 2.—*The premises of any public elementary school.* “Under these words,” said Pollock, B.,<sup>10</sup> “in the absence of any other explanation, certainly any play-ground or room would be included; and I should also be inclined to think that in the word ‘premises,’ unless there were some grounds to the contrary, the master’s house would be included.”

In cases under this section the penalty is incurred, not only by the persons letting and hiring the prohibited committee room, but “whenever you find that *de facto* there are certain persons met together who act as a committee during the polling day, and in a room, whether it be a room within (a), (b), (c), or (d) of sect. 20, in respect of which there is a prohibition, in all those cases, at any rate, that member of the committee who so uses that room must be taken to be within the provision.”<sup>11</sup>

#### ART. 30.—**Relief to Candidate who has been Guilty by Agents of Treating, Undue Influence, or Illegal Practice.**

*Where upon the trial of an election petition respecting an election for a county or borough the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further reports that the candidate has proved to the court—*

(a) *That no corrupt or illegal practice was committed at such election by the candidate or his election agent, and that the offences mentioned in the said report were committed contrary to the orders*

<sup>9</sup> (1886), 4 O. & H. 116.

<sup>10</sup> *Buckrose* (1886), 4 O. & H. 114.

<sup>11</sup> *Ibid.* 115



and without the sanction or connivance of such candidate or his election agent; and

(b) That such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and

(c) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(d) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents, then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under the Corrupt Practices Act, 1883.<sup>12</sup>

NOTE.—The only cases where relief is granted, and then only when the Court is satisfied that certain conditions have been fulfilled, are—

(1) Under sect. 22 of the Corrupt and Illegal Practices Prevention Act, 1883, set out in the above Article, by the election court at the trial of a petition, *to a candidate* who has been guilty *by his agents* of treating, undue influence, or illegal practice:

(2) Under sect. 34 (2) of the Representation of the People Act, 1918, by the High Court, *to any person* convicted of the corrupt practice of incurring expenses on account of holding public meetings or issuing advertisements, circulars or publications for the purpose of promoting or procuring the election of a candidate unless authorised in writing by the election agent.<sup>13</sup>

(3) Under sect. 22 and the Third Schedule, rule 10 of the Representation of the People Act, 1918, by the Court trying the case *to any person* convicted of the illegal practices created by those provisions.<sup>14</sup>

(4) Under sect. 23 of the Corrupt Practices Act, 1883, by the High Court or the election court *to any person* who has been guilty of an illegal practice or illegal payment, employment, or hiring.<sup>15</sup>

(5) Under sect. 34 of that Act by the High Court or the election court *to a candidate or his election agent* who has been guilty of the illegal practice of not transmitting the necessary return and declaration respecting election expenses.<sup>16</sup>

No relief is given by the election court at the trial of a petition under the provisions of sect. 22 of the Corrupt Practices Act, 1883, which are set out in the above Article—

(1) Where a candidate has by himself or his election agent been

<sup>12</sup> Corrupt Practices Act, 1883, s. 22. *infra*.

<sup>13</sup> See Article 31, p. 192. *infra*.

<sup>14</sup> See Article 26 (12) (13) (14) (15), p. 145, *supra*, and Article 32 (2), p. 193,

<sup>15</sup> See Article 32, p. 192, *infra*.

<sup>16</sup> See Article 33, p. 197, *infra*.

guilty of any corrupt or illegal practice, or where such offence has been committed by any other person with the sanction or connivance of the candidate or his election agent;

(2) Where the candidate has by his agents been guilty of any corrupt practice other than treating or undue influence.

The general principles upon which relief is granted have been thus explained.

"The intention of the Corrupt and Illegal Practices Prevention Act, 1883, was to draw the strings of the law as tightly round corruption and illegal practices as possible, but at the same time the law intends by sects. 22 and 23 to enable judges to relieve candidates from all responsibility for corrupt and illegal practices, where they satisfy the judges that they have done everything on their part to render the election pure and free from corruption. . . . Those who stand for Parliament must feel the full responsibility of personally taking care that those whom they allow to act as their agents are not guilty of corrupt and illegal practices, and if they fail to do that they disentitle themselves to the relief from the consequences of the acts of others, which judges are entitled to give them under sect. 22." <sup>17</sup>

"It is quite true that the Act lays down most stringent rules as to the conduct of candidates. It may be said that these rules go so far into detail as to make it very difficult for either the candidate or his election agent to go through an election without in some way or other transgressing against the multifarious provisions of these Acts, but the answer to this is that the Act takes every possible care by the 22nd and 23rd sections that no candidate who has tried his best to conduct his election purely and fairly shall suffer thereby." <sup>18</sup>

In order to obtain relief under the provisions of sect. 22, which are set out in the above Article, the candidate must prove that the conditions set out under the headings (a), (b), (c) and (d) have been fulfilled.

In *Rochester* <sup>19</sup> the respondent applied for relief under this section in respect of the use of certain hat cards, which was held to amount to an illegal practice. The Court held that the respondent was not entitled to relief, and Hawkins, J., thus stated the reasons for this decision: "First of all, it certainly was not proved that these hat cards were used contrary to the orders and without the sanction or connivance of the candidate or his election agent, because the respondent himself in the box did not say that he had forbidden the use of those cards (though he did say he had given no such orders for their use); and when the payments came to be

<sup>17</sup> *Per* Vaughan Williams, J., in *Rochester* (1892), 4 O. & H. 160, 161.

<sup>18</sup> *Per* Vaughan Williams, J., in

*Stepney (Borough)* (1892), Day's Election Cases, 124.

<sup>19</sup> (1892), Day's Election Cases, 115.

made he sanctioned and passed them in his account. Then, did the election agent or the respondent take reasonable means to prevent the commission of illegal practices? I do not find any evidence that they took any means to prevent these cards being worn or used or paid for, and when I regard the number of these cards which were used, and bought with the view of being used, it is impossible to come to the conclusion that they were of a 'trivial character.' "

In *Southampton*,<sup>20</sup> where there were two candidates elected, it was proved that a Mr. B., who was chairman of a ward Conservative Association, and a member of the respondent's executive committee had sent a telegram to a man at Winchester asking him to come down and vote, and saying, "Fare all right," and that the man had come and voted and that Mr. B. had paid his fare. As to this relief was prayed under sect. 22, and in the result the Court declared the election of one candidate void and that of the other good.

Wright, J., in giving judgment, said<sup>21</sup>: "The payment of 2s. made by Mr. B. to the witness P. . . . was a payment admitted by Mr. T., the respondent himself, in the box.

"But then we have to consider whether this other condition is satisfied, namely, 'that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election.' We have both come to the conclusion, although there is no authority upon it, and although the matter is by no means free from doubt, that that section may be read as applying to each of the candidates separately, and if one of them is shown to have used all reasonable means he may be excused, although the other, who does not show that he has used all reasonable means, may not be excused."

Bruce, J., in concurring, said<sup>22</sup>: "I felt some difficulty, indeed the same difficulty that he has expressed, in saying that the payment of money for the conveyance of a voter was 'unimportant,' when, as we know in some elections, a single vote may turn the election. But I have come to the conclusion that in this case the payment of 2s. was a payment that was 'trivial and unimportant' in its character. I attach importance to that word 'character.' The Act of Parliament does not say trivial and unimportant in its results. It may be that an act that is trivial in its character may be important in its results. The words in the Act of Parliament are, 'of a trivial, unimportant and limited character,' and if any payment of an illegal fare can be trivial and unimportant, I think the payment of a sum of 2s. must be so considered."

<sup>20</sup> (1895), 5 O. & H. 20.

<sup>21</sup> *Ibid.* 20, 21.

<sup>22</sup> *Ibid.* 23.



**ART. 31.—Relief in Respect of Corrupt Practice Created by Sect. 34 of Representation of the People Act, 1918.**

*Where a person is guilty of the corrupt practice of incurring expenses on account of holding public meetings or issuing advertisements, circulars or publications for the purpose of promoting or procuring the election of a candidate without the written authority of the election agent, the Court before whom such person is convicted may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by sect. 6 of the Corrupt and Illegal Practices Prevention Act, 1883.*<sup>23</sup>

NOTE.—The offence created by sect. 34 of the Representation of the People Act, 1918, is declared to be a “corrupt practice other than personation within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883,”<sup>24</sup> and is accordingly punishable as a misdemeanour on indictment under sect. 6 of the last-mentioned Act with

(1) Hard labour or a fine, and

(2) Incapacity during seven years from (i) being registered or voting at a parliamentary or municipal election; (ii) holding any public or judicial office within the meaning of the Act;<sup>25</sup> (iii) being elected to and sitting in the House of Commons.

The power of relief given to the Court by sect. 34 (2) of the Representation of the People Act, 1918, is limited to relief from the incapacities referred to under (2) above and does not extend to relief from the punishment referred to under (1).

The conditions governing relief are not defined. The matter is left to the discretion of the Court which “may, if they think it just in the special circumstances of the case, mitigate or entirely remit” any or all of the above-mentioned incapacities.<sup>26</sup>

**ART. 32.—Relief in Certain Cases to anyone Guilty of Illegal Practice or Illegal Payment, Employment, or Hiring.**

(1) *Where on application made it is shown to the High Court or to an election court by such evidence as seems to the Court sufficient—*

(a) *That any act or omission of a candidate at any election, or of his agent, or of any other agent or person, would by reason of being a payment, engagement, employment or contract in contravention of the Corrupt Practices Act, 1883, or of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by the said*

<sup>23</sup> R. P. Act, 1918, s. 34 (2).

<sup>24</sup> *Ibid.*

<sup>25</sup> See Corrupt Practices Act, 1883,

s. 64.

<sup>26</sup> R. P. Act, 1918, s. 34 (2).

Act, or of otherwise being in contravention of any of the provisions of the said Act, be, but for this section, an illegal practice, payment, employment, or hiring; and

- (b) That such act or omission arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and
- (c) That such notice of the application has been given in the county or borough for which the election was held as to the Court seems fit;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under the said Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of the said Act, which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under the said Act of the said act or omission.<sup>26</sup>

(2) In the case of the illegal practices described in Article 26 under heads (12), (13), (14) and (15) (see p. 145, *supra*), the Court before whom a person is convicted may if they think it just in the special circumstances of the case mitigate or entirely remit any incapacity imposed by sect. 10 of the Corrupt and Illegal Practices Prevention Act, 1883.<sup>27</sup>

NOTE 1.—On application . . . to the High Court or to an election court. Where there is no petition pending, the application should be made upon affidavit to one of the judges on the rota for the trial of election petitions, sitting either in court or in chambers. Formerly it was the practice to apply to a Divisional Court, but having regard to sect. 56 of the Corrupt Practices Act, 1883, such a Court, unless the members of it are election judges, has no jurisdiction in the matter<sup>28</sup>; nor has a master.<sup>29</sup>

Notice must be given of the application two clear days before the hearing—(1) to the defeated candidate or candidates; (2) to the returning officer; and (3) to the constituency by advertisements.<sup>30</sup> Such advertisements may be inserted in newspapers circulating in the district, or contained in posters.<sup>30</sup> Notice should also be given to the Elections Petitions Office, Room 175, Royal Courts of Justice.<sup>1</sup>

<sup>26</sup> Corrupt Practices Act, 1883, s. 23.

<sup>27</sup> R. P. Act, 1918, s. 22 (1) (a), Third Sch. rule 10. See also Note to Art. 31, dealing with corresponding provision for relief in the case of the corrupt practice created by s. 34 of the R. P. Act, 1918.

<sup>28</sup> *Shaw v. Reckitt* [1893], 1 Q. B.

779.

<sup>29</sup> Corrupt Practices Act, 1883, s. 56.

<sup>30</sup> *South Shropshire* (1886), 34 W. R. 352; *Ex parte Lenanton* (1889), 53 J. P. 263; 5 T. L. R. 173.

<sup>1</sup> The Corrupt and Illegal Practices Prevention Act, 1883, by E. Jelf, 3rd ed., 113, 114.—Sweet and Maxwell.

In *Walsall*<sup>2</sup> the Court refused an application for relief stated to be in respect of certain matters "if found by the Court to be illegal."

Where there is a petition pending, the application should be made to the election court.

The acts in respect of which relief is sought must be specified, but not the grounds upon which relief is sought.<sup>3</sup>

NOTE 2.—*That such act or omission arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith.* What is inadvertence? In *Stepney Division*<sup>4</sup> an order was made under the above section, but in giving judgment, Denman, J., said<sup>5</sup>: "I do not say that if I found a precisely similar course taken on any future occasion I might not feel constrained to hold otherwise: but I cannot but give some weight to the consideration that the Act had never before the present case come before any judicial tribunal; that it is an Act by no means easy to master: and that the blot which has been hit after full investigation is one which was so far from obvious that neither the respondent's counsel nor the counsel for the Director of Public Prosecutions relied upon it until the Court pointed out its bearing upon the recriminatory charge. I think, for the reasons above given, that we shall be justified in holding that the illegal conduct here arose from inadvertence, and not from want of good faith within the meaning of sect. 23 (b); and that, inasmuch as a sufficient notice was given that an application would be made to us to that effect, we may make an order allowing the illegal employment and payment in question to be an exception from the provisions of the Act referred to in that section."

The question what amounts to inadvertence was dealt with in *Walsall*<sup>6</sup> and *Stepney (Borough)*,<sup>7</sup> and it is difficult to reconcile the decisions in the two cases. The judgment in *Stepney (Borough)* was delivered only one month after that in *Walsall*, and in the former case the Court stated that the judgment in *Walsall*, had not been published, and treated the point as new. In both these cases the election agent had committed an illegal practice—in the first, by paying for certain hat cards; in the second, by paying for certain banners. In *Walsall*<sup>6</sup> the Court refused relief on the ground that the payment for the hat cards did not arise from accident or inadvertence, as it was made intentionally although in ignorance of its illegality. The election was therefore avoided.

According to the decision in this case inadvertence does not mean ignorance of the law. "Although a man may not know the law

<sup>2</sup> (1892), Day's Election Cases, 77.

<sup>3</sup> *East Dorset* (1910), 6 O. & H. 23-28.

<sup>4</sup> (1886), 4 O. & H. 52.

<sup>5</sup> *Ibid.* 53.

<sup>6</sup> *Ibid.*

<sup>6</sup> (1892), 4 O. & H. 128.

<sup>7</sup> *Ibid.* 182.



because he has not taken the trouble to make himself acquainted with it, no one," said Hawkins, J., "can call that inadvertence within the meaning of sect. 23." <sup>7</sup>

"If it were once allowed that a breach of the law, in the sense that there was a misconception of the law, is to be treated as an inadvertence, I do not know," said Pollock, B. <sup>8</sup> "where there is to be any limit. If one man is entitled to say, 'I did this by way of inadvertence, because I did not think, or it did not occur to me, that this was a mark of distinction,' another might just as well say, 'Well, I knew there was an Act of Parliament, and I knew that one of the sections was directed against the use of flags and so on, but I did not read it; somebody told me about it; it never occurred to me that a cockade or ribbon could be an illegality.' I cannot see, therefore, how it is possible for us to grant relief in this respect."

In *Stepney (Borough)*, <sup>9</sup> on the other hand, relief was granted on the ground that the payment for the banners had been made in good faith.

Cave, J., said <sup>10</sup>: "The two matters to which we have to direct our attention are—first, whether the thing was done inadvertently; and, secondly, whether there is any absence of *bona fides*. . . . Was it inadvertence in the sense that the person doing it, or making the omission, was not aware what it was that he was doing, or was it inadvertence because he did not know that what he was doing was wrong? It seems to me that a man may be inadvertent in regard to both those points. He may be inadvertent if he does something of which he was not actually aware at the time; he may also be inadvertent, if he was not aware of the character of the act—that is to say, that it is a thing which is wrong. . . . Now, when we come to inquire into the question of *bona fides*, it seems to me that one of the chief points will be to look at the election and see whether it was in other respects pure, or whether there was an attempt made under one guise or another to get out of the Act, and to obtain some benefit that the Act did not allow. The question whether the election is pure does not mean whether it was free from corrupt practices, because if it was not free from corrupt practices the question could not arise at all. It means whether there was apparently a *bonâ fide* desire to keep free from illegal practices."

"The section is intentionally very carefully guarded, and has always been limited by the Courts to small and accidental mistakes." <sup>11</sup>

In the case of *Ex parte Walker*, <sup>12</sup> under the corresponding

<sup>7</sup> (1892), 4 O. & H. 129.

<sup>8</sup> *Ibid.* 127, 128.

<sup>9</sup> *Ibid.* 182.

<sup>10</sup> Day's Election Cases, 120, 121, 122. See also *Cork* (1911), 6 O. & H.

*per* Gibson, J., at p. 359.

<sup>11</sup> *Per* Wright, J., in *Southampton* (1895), 5 O. & H. 25.

<sup>12</sup> (1889), 22 Q. B. D. 384.

section (sect. 20) of the Municipal Corporations (Corrupt and Illegal Practices) Act, 1884, it was held by the Court of Appeal, reversing the Divisional Court, that ignorance of the law was "inadvertence" within the meaning of the section, and that therefore the applicant was entitled to relief; but Lord Esher, M.R., said: "At any future election it will be very difficult to excuse anyone from penalties on this ground."<sup>13</sup>

Under sect. 20 of the Municipal Corporations (Corrupt and Illegal Practices) Act, 1884, the Court has made an order granting relief to the candidate where a meeting was held in a prohibited place,<sup>14</sup> where the name of the printer was omitted from the candidate's address,<sup>15</sup> and from a poster issued by the candidate,<sup>16</sup> and where the maximum number of messengers was exceeded<sup>17</sup>; and has also granted relief to a printer for omitting his name from a poster.<sup>16</sup>

On the other hand, in *West Bromwich*,<sup>18</sup> where a committee room was taken at premises on which "refreshment is ordinarily sold for consumption on the premises" within sect. 20 of the Corrupt Practices Act, 1883, the Court refused to grant relief under sect. 23 of the Act, on the ground of ignorance of the law. In giving judgment, Ridley, J., said<sup>19</sup>: "Now it is said that ought to be treated as an inadvertence, a word which is capable of several interpretations, and which has been interpreted in various ways, not always, I think, consistent with each other. It may mean mere thoughtlessness, it may mean what is equivalent to a mere mistake, but in this case it was also an ignorance of the law. There is a case in 1892—*Stepney*<sup>20</sup>—in which Case, J., allowed that there might be relief given under sect. 23, where the Act of Parliament was recent and possibly was not completely known. It is an Act of Parliament which contains many rather multifarious directions, and it is possible in those days, which are now some distance from us, that persons might fairly be described as acting inadvertently because they did not know the law. But I think things are different now, and it seems to me that where an agent or person entrusted with authority by the election agent goes to take a room of this kind he ought to know the law. . . . Inadvertence does not cover a case where in the immediate duty which he is performing he ought to have full knowledge of the law."

In the same case, Bucknill, J., said<sup>21</sup>: "I am not going to

<sup>13</sup> (1889), 22 Q. B. D. p. 388; see also the observations of Fry, L.J., at p. 390.

<sup>14</sup> *Ex parte Hutchinson* (1889), 5 T. L. R. 136; *Re Election of County Councillors*, *ibid.* 173.

<sup>15</sup> *Ex parte Ives*, *ibid.*

<sup>16</sup> *Ex parte Clark* (1885), 52 L. T.

<sup>17</sup> *Ex parte Darlington* (1889), 5 T. L. R. 183.

<sup>18</sup> (1911), 6 O. & H. 286.

<sup>19</sup> *Ibid.* 287.

<sup>20</sup> 4 O. & H. at p. 182.

<sup>21</sup> *West Bromwich* (1911), 6 O. & H. 289.

attempt a definition of 'inadvertence,' but it certainly does not include ignorance of the law."

NOTE 3.—*The Court may make an order allowing such act or omission to be an exception from the provisions of the said Act. Where an application for relief is made under sect. 23, "if an order is made upon it, the effect will be to do away with the illegal practice which has so been relieved against, so that when the Court comes to make its report to the Speaker—if that practice is all that has been proved against the respondent—the Court will have to report that there has been no illegal practice."*<sup>22</sup>

**ART. 33.—Relief to Candidate or Election Agent Guilty of Illegal Practice of Non-compliance with Provision as to Return and Declaration respecting Election Expenses.**

(1) *Where the return and declarations respecting election expenses of a candidate at an election for a county or borough have not been transmitted as required by the Corrupt Practices Act, 1883, or, being transmitted, contain some error or false statement, then—*

(a) *If the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declaration, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness or misconduct of his election agent or sub-agent, or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or*

(b) *If the election agent of the candidate applies to the High Court or an election court and shows that the failure to transmit the return and declarations which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,*

*the Court may, after such notice of the application in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the Court seems fit, make such order for allowing an authorised excuse for the failure to transmit*

<sup>22</sup> *Per Cave, J., in Hexham (1892) 4 O. & H. 144—145.*



such return and declaration, or for an error or false statement in such return and declaration, as to the Court seems just.<sup>23</sup>

(2) Where it appears to the Court that any person being or having been election agent or sub-agent has refused or failed to make such return, or to supply such particulars as will enable the candidate and his election agent respectively to comply with the provisions of the said Act as to the return and declaration respecting election expenses, the Court, before making an order allowing the excuse mentioned above, shall order such person to attend before the Court, and on his attendance shall, unless he shows cause to the contrary, order him to make the return and declaration, or to deliver a statement of the particulars required to be contained in the return, as to the Court seem just, and to make or deliver the same within such time, and to such person, and in such manner as the Court may direct, or may order him to be examined with respect to such particulars, and may in default of compliance with any such order, order him to pay a fine not exceeding £500.<sup>24</sup>

(3) The order may make the allowance conditional upon the making of the return and declaration in a modified form, or within an extended time, and upon the compliance with such other terms as to the Court seem best calculated for carrying into effect the objects of the said Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under the said Act in respect of the matter excused by the order; and where it is proved by the candidate to the Court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Court shall relieve the candidate from the consequences of such act or omission on the part of his election agent.<sup>25</sup>

(4) The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in the said Act as the date of the allowance of the excuse.<sup>26</sup>

NOTE.—In *Norwich*,<sup>27</sup> where the return did not contain the names and addresses of the clerks and messengers, as required under Schedule II., Part I., the Court made an order under the above provisions; and Cave, J., said:—

“The names and addresses of clerks and messengers were not inserted in the accounts, and I think it is clear that a description must be given which would involve that by which they would be

<sup>23</sup> Corrupt Practices Act, 1883, s. 34 (1).

<sup>24</sup> *Ibid.* s. 34 (2).

<sup>25</sup> *Ibid.* s. 34 (3).

<sup>26</sup> *Ibid.* s. 34 (4).

<sup>27</sup> (1886), 4 O. & H. 90—91.

known, identified, and distinguished from other persons. Obviously, therefore, their addresses and their business should be given; but one must bear in mind that this, again, is a part of the Act which has never yet been interpreted, and although I entertain no doubt, yet I am not satisfied that this omission was done for any wrong or improper purpose, and I think under the circumstances it may be treated as inadvertence."

In *Buckrose*,<sup>28</sup> in the recriminatory case, counsel for the respondent alleged that an insufficient account of the election expenses of the petitioner had been filed by his election agent. It appeared that through inadvertence the names of the persons from whom rooms had been hired were omitted from the return, and that the election agent had included his own personal expenses in the sums paid for hiring the rooms. These facts were admitted by counsel for the petitioner, and he stated that he proposed to apply to the Court for relief of the petitioner and his agent from the consequences of these irregularities. The Court ordered notice of the application to be served upon the returning officer, and on a subsequent day on proof of this notice granted the application.

In giving judgment in favour of the petitioner, Pollock, B., said:<sup>29</sup> "The recriminatory case is founded upon an alleged breach of the requirements of sect. 33, and the provisions of the Second Schedule of the Corrupt Practices Act, 1883. . . . It is impossible to read the section and the requirements that are set forth in the schedule without seeing that they must be both observed substantially, and that both contain matters which are of the greatest importance to carry out the object and intention of the Act, namely, that the other side in the election, and the public at large, should be properly informed in respect of every payment which is made, whether it be of one character or the other, and therefore it was that we watched very carefully to see whether the provisions of the Act had been complied with. . . . With regard to the breach, I only have to observe that this and all other Courts that sit for the purpose of hearing these cases would be most unwilling to allow anything like a substantial variation from the requirements in the schedule. . . . It is observable in this case that there is nothing in the general character of the account which is of a suspicious nature; it is not like some accounts where large or immoderate sums have been spent upon messengers or matters of that kind which in their very essence may appear to be of a doubtful character, but there are a great many reasons why it should be accurately set forth, in an account of this kind, how every penny has been spent. Now, Mr. J. (the election agent) was called, and he certainly did give an account to the uttermost penny, so far as he could, of every item

<sup>28</sup> (1886), 4 O. & H. 118.

<sup>29</sup> *Ibid.* 118, 119.

which is challenged in this account, and therefore the Court were perfectly satisfied that there had been not only no money misspent, but that there had been no intention in the framing of this account to mislead anybody in this important particular."

As to how and to whom the application for relief is to be made, see p. 193, *supra*.

#### ART. 34.—Punishment of Person Convicted of Corrupt Practice.

A person who commits any corrupt practice<sup>29</sup> other than personation, or aiding, abetting, counselling, or procuring the commission of the offence of personation, shall be guilty of misdemeanour, and on conviction on indictment shall be liable to be imprisoned with or without hard labour for a term not exceeding one year, or to be fined any sum not exceeding £200.<sup>30</sup>

A person who commits the offence of personation,<sup>1</sup> or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.<sup>2</sup>

A person who is convicted on indictment of any corrupt practice shall, in addition to any punishment as above provided, be incapable during a period of seven years from the date of his conviction (a) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office within the meaning of the Corrupt Practices Act, 1883; or (b) of holding any public or judicial office,<sup>3</sup> and if he holds any such office the office shall be vacated.<sup>4</sup>

Any person so convicted of a corrupt practice shall be incapable of being elected to and of sitting in the House of Commons during the term of seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.<sup>5</sup>

A person who is summarily convicted by an election court of any corrupt practice, which cannot occur unless such person declines to be tried by a jury, shall be subject to the same incapacities as if he had been convicted on indictment, and further, may be imprisoned with or without hard labour for a term not exceeding six months, or ordered to pay a fine not exceeding £200.<sup>6</sup>

NOTE.—Limitation of time for prosecution of offence.—A proceeding against a person in respect of the offence of a corrupt or illegal

<sup>29</sup> As to what is a corrupt practice, see Article 19, p. 91, *supra*.

<sup>30</sup> Corrupt Practices Act, 1883, s. 6 (1).

<sup>1</sup> As to what is personation, see Article 23, p. 136, *supra*.

<sup>2</sup> Corrupt Practices Act, 1883, s. 6 (2).

<sup>3</sup> As to the meaning of "public office" and "judicial" office, see sect. 64 of the Corrupt Practices Act, 1883, p. 330, *infra*.

<sup>4</sup> *Ibid.* s. 6 (3).

<sup>5</sup> *Ibid.* s. 6 (4).

<sup>6</sup> *Ibid.* s. 43 (4).



practice, or any other offence under the Corrupt Practices Prevention Acts, must be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners must be commenced within one year after the offence was committed, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed.<sup>7</sup>

Every person guilty of a corrupt practice at an election is prohibited from voting at such election, and if any such person votes, his vote shall be void.<sup>8</sup>

**ART. 35.—Punishment of Candidate found on Election Petition Guilty Personally or by Agents of Corrupt Practices.**

Where an election court reports that any corrupt practice other than treating or undue influence has been proved to have been committed by or with the knowledge and consent of any candidate, or that treating or undue influence has been committed by a candidate,<sup>9</sup> that candidate shall be incapable of ever being elected for the county or borough in reference to which the offence has been committed, and if he has been elected his election shall be void, and such candidate is further subjected to the same incapacity,<sup>10</sup> as if at the date of the report he had been convicted on indictment of a corrupt practice.<sup>11</sup>

Where an election court reports that a candidate has been guilty by his agents<sup>12</sup> of any corrupt practice he is incapable of being elected for the county or borough in reference to which the offence has been committed for seven years after the date of the report, and if he has been elected his election shall be void.<sup>13</sup>

NOTE.—“A candidate who is *bonâ fide* ignorant of a corrupt practice on the part of his agent is not personally liable therefor, but if he is ignorant *malâ fide* it is otherwise. Mere carelessness is not sufficient to render him personally liable unless it is of so gross a character as to compel to the conclusion that the ignorance is *malâ fide*; that is to say, that he suspected that something was wrong and chose wilfully to shut his eyes in order that he might be able to say on a future occasion that he did not actually know what was going on.”<sup>14</sup>

<sup>7</sup> Corrupt Practices Act, 1883, s. 51 (1). As to the prosecution of offences committed abroad (which can only occur in the case of absent voters), see R. P. Act, 1918, s. 38.

<sup>8</sup> Corrupt Practices Act, 1883, s. 36.

<sup>9</sup> As to who is “a candidate,” see sect. 63 of the Corrupt Practices Act, 1883, p. 329, *infra*; and see also p. 150, *supra*.

<sup>10</sup> As to this incapacity, see Article 34, p. 200, *supra*.

<sup>11</sup> Corrupt Practices Act, 1883, s. 4.

<sup>12</sup> As to who is “an agent,” see Article 18, Note 5, pp. 71–82, *supra*.

<sup>13</sup> Corrupt Practices Act, 1883, s. 5.

<sup>14</sup> *Per* Cave, J., in *Hexham* (1892), Judgments, 7; see also *Rochester*, *ibid.* 80.

**ART. 36.—Punishment for Illegal Practice, Illegal Payment, Employment, or Hiring.**

*A person guilty of an illegal practice is on summary conviction liable to a fine not exceeding £100, and is incapable, during a period of five years from the date of his conviction, of being registered as an elector, or of voting at any election (whether it be a parliamentary election or an election for a public office,<sup>15</sup> held for or within the county or borough in which the illegal practice was committed.<sup>16</sup>*

*If the election court reports that any illegal practice has been committed by or with the knowledge and consent of any candidate, the candidate is incapable of being elected to or sitting in the House of Commons for the county or borough in respect of which the illegal practice has been committed for seven years next after the date of the report, and if he has been elected his election is void, and he is further subject to the same incapacity as if at the date of the report he had been convicted of such illegal practice.<sup>17</sup>*

*If the report of the election court is that a candidate has been guilty by his agents<sup>18</sup> of any illegal practice in reference to such election, the candidate shall be incapable of being elected to or sitting in the House of Commons for the county or borough in reference to which the illegal practice was committed during the Parliament for which the election was held, and if he has been elected his election shall be void.<sup>19</sup>*

*A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding £100.<sup>20</sup>*

*A candidate, or an election agent of a candidate, who is personally guilty of an offence of illegal payment, employment, or hiring, is guilty of an illegal practice, and is punishable accordingly.<sup>21</sup>*

**NOTE.**—A person guilty of an illegal practice, or of illegal payment, employment, or hiring, cannot be proceeded against by indictment. He has, however, committed an offence under the Corrupt Practices Act, 1883, which is punishable on summary conviction, and may be prosecuted in manner provided by the Summary Jurisdiction Acts<sup>22</sup>; further, he is prohibited from voting at such election, and if he votes his vote shall be void.<sup>23</sup>

<sup>15</sup> As to the meaning of "public office," see sect. 64 of the Corrupt Practices Act, 1883, p. 330, *infra*.

<sup>16</sup> Corrupt Practices Act, 1883, s. 10.

<sup>17</sup> *Ibid.* s. 11.

<sup>18</sup> As to who is "an agent," see

pp. 71—82, *supra*.

<sup>19</sup> Corrupt Practices Act, 1883, s. 11.

<sup>20</sup> *Ibid.* s. 21 (1).

<sup>21</sup> *Ibid.* s. 21 (2).

<sup>22</sup> *Ibid.* ss. 21, 54 (1).

<sup>23</sup> *Ibid.* s. 36.

**ART. 37.—Who may Petition against Return of Candidate, and within what time.**

*Any one or more of the following persons may petition:—(1) Any person who voted or who had a right to vote at the election to which the petition relates; or (2) any person claiming to have a right to be returned or elected at such election; or (3) any person alleging himself to have been a candidate for such election.<sup>24</sup> The petition must be signed by the petitioner, or all the petitioners if more than one, and must be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, unless it questions the return or election—(i.) upon the ground of corrupt practices and specifically alleges a payment of money or other reward to have been made by any member, or on his account or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment<sup>25</sup>; or (ii.) upon the ground of an illegal practice, in which case the petition may be presented at any time before the expiration of fourteen days after the day on which the returning officer receives the return and declarations respecting election expenses by the member to whose election the petition relates and his election agent<sup>26</sup>; or (iii.) upon the ground of an illegal practice, and if the petition specifically alleges a payment of money or some other act to have been made or done, since the day on which the returning officer so receives the return and declarations aforesaid, by the member or an agent of the member or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act.<sup>27</sup>*

*In cases (ii.) and (iii.) above, i.e., where the petition questions the return or the election upon the ground of an illegal practice—*

- (a) where the return and declarations are received on different days, the day on which the last of them is received; and*
- (b) where there is an authorised excuse for failing to make and transmit the return and declarations respecting election expenses, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse.*

<sup>24</sup> Parliamentary Elections Act, 1868, s. 5.

<sup>26</sup> Corrupt Practices Act, 1883, s. 40 (1) (a).

<sup>25</sup> *Ibid.* s. 6 (2).

<sup>27</sup> *Ibid.* s. 40 (1) (b).



*shall be substituted for the day on which the return and declarations are received by the returning officer.*<sup>28</sup>

NOTE.—*Presentation of petitions by poor persons.* Dealing with this, Bowen, J., said in *Wigan*: “There may be many constituencies in which from the character and composition of the constituency, or from the influence, perhaps, of persons who live near the constituency or in it—I say there may be many constituencies (I can conceive, at all events, some) in which it would be difficult for anybody except a poor person to come forward to petition. I do not think it would be in the spirit of the English law to prevent such persons from presenting a petition simply because they were poor, nor even because it was a great disadvantage to the sitting member that he should not have a wealthier litigant to contend against.”<sup>29</sup> . . . The character and status of the petitioners is a matter to be carefully watched by the election judges in order that they may see that petitions are not made the means of inflicting upon the sitting member a litigation for the costs of which, if he succeeds, he will have no remedy whatever beyond a recourse to the limited security imposed by the statute as a condition on the presentation of election petitions.<sup>30</sup> . . . Although in each instance it is a matter of degree, and it is very difficult to adjust one’s judgment to the particulars of every case that might arise, one is bound on such occasions to see that the great right of English electors to petition against acts of corruption is not manipulated so as to enable a powerful political party to petition under the cover of an insolvent person.”<sup>1</sup>

#### ART. 38.—Grounds of Petition.

*The grounds of a petition are that the election or return was void, or that there was no return.*<sup>2</sup> *An election may be void for any of the reasons stated in Article 18, p. 62, supra. A return may be void as being an undue*<sup>3</sup> *or double*<sup>4</sup> *return.*

NOTE 1.—As to what a petition must contain, see Appendix I. pp. 215—235, *infra*, and for forms of petition, see Appendix V. pp. 393—398, *infra*.

NOTE 2.—*Undue return.* As to the duties of the returning officer in regard to making a due return and the penalties for not doing so, see pp. 13, 14, *supra*. Instances of a petition on the ground of an

<sup>28</sup> Corrupt Practices Act, 1883, s. 40 (4).

<sup>29</sup> (1881), 4 O. & H. 18.

<sup>30</sup> (1881), 4 O. & H. 19.

<sup>1</sup> *Ibid.* 18—19.

<sup>2</sup> Parliamentary Elections Act, 1868, ss. 5, 40, 52, 53.

<sup>3</sup> *Ibid.* ss. 52, 53.

<sup>4</sup> *Ibid.* s. 40.

undue return by reason of a mistake in counting the ballot papers are *Greenock* <sup>5</sup> and *Halifax*.<sup>6</sup>

On the trial of a petition complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election.<sup>7</sup>

NOTE 3.—*Double return*. By sect. 2 of the Ballot Act, 1872, if the votes for any candidates at an election for a county or borough are equal, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, *if he is a registered elector, may*, but he need not, give such additional vote, but he shall not in any other case be entitled to vote at an election for which he is returning officer.<sup>8</sup> If the returning officer cannot vote, or does not choose to do so, he is to make a double return.

#### ART. 39.—Security for Costs.

*At the time of presentation of a petition, or within three days afterwards, security has to be given on behalf of the petitioner for the payment of all costs, charges and expenses that may become payable by him—(1) to any person summoned as a witness on his behalf; or (2) to the member whose election or return is complained of.*<sup>9</sup>

*The amount of security required is £1,000, and it must be given either by recognisance to be entered into by any number of sureties not exceeding four, or by a deposit of money, or partly in one way and partly in the other.*<sup>10</sup>

NOTE 1.—*Security . . . by recognisance*.—The recognisance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.<sup>11</sup>

There may be one recognisance acknowledged by all the sureties, or separate recognisances by one or more, as may be convenient.<sup>11</sup>

The recognisance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained.<sup>12</sup>

<sup>5</sup> (1892), Day's Election Cases, 21, 22.

<sup>6</sup> (1893), 4 O. & H. 203.

<sup>7</sup> Parliamentary Elections Act, 1868, s. 53.

<sup>8</sup> There was a double return for Horsham in 1868 which was dealt with under this section. It seems that a treble return, such as there was for

Knarborough in 1852, would be dealt with in a similar way.

<sup>9</sup> Parliamentary Elections Act, 1868, s. 6 (4).

<sup>10</sup> *Ibid.* s. 6 (5); and see *Pease v. Norwood* (1869), L. R. 4 C. P. 235.

<sup>11</sup> Election Petition Rules, r. 18. p. 359, *infra*.

<sup>12</sup> *Ibid.* r. 19.

For form of such recognisance see Appendix V., Form 28, p. 399, *infra*.

The recognisance or recognisances shall be left at the master's office by or on behalf of the petitioner in like manner as prescribed for the leaving of a petition forthwith after being acknowledged.<sup>13</sup>

NOTE 2.—*Security . . . by a deposit of money.* The deposit of money by way of security for payment of costs, charges and expenses payable by the petitioner shall be made by payment into the Bank of England to an account to be opened there by the description of "The Parliamentary Elections Act, 1868, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England, for the time being, for the purposes for which security is required, and a bank receipt or certificate for the same shall be forthwith left at the master's office.<sup>14</sup>

The master shall file such receipt or certificate, and keep a book open to inspection by all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.<sup>15</sup>

**ART. 40.—Who may be Respondent and what Notice must be served upon him.**

*The person whose return is petitioned against is the only person who can be made respondent,<sup>16</sup> except a returning officer, and within five days of the presentation of the petition, exclusive of the day of presentation, the petitioners must serve notice of the presentation and of the proposed security on the respondent, together with a copy of the petition.<sup>17</sup>*

*In Scotland, such notice must be served within five days, inclusive of the day of presentation.<sup>18</sup>*

NOTE.—A person who assumes that he has been elected, and acts accordingly, may be made respondent to a petition. Thus, in *Yates v. Leach*,<sup>19</sup> where A. and B. were condidates for the office of town councillor, and A. obtained a majority and was declared elected, but being disqualified refused to serve, and B. thereupon claimed to be elected and acted for a time, it was held that the proper form of proceeding was by petition; and, both candidates having been made respondents, the Court refused an application by B. to have his name struck out of the petition. As the respondent,

<sup>13</sup> Election Petition Rules, r. 20, p. 360, *infra*.

<sup>14</sup> *Ibid.* r. 16, p. 359, *infra*.

<sup>15</sup> *Ibid.* r. 17.

<sup>16</sup> *Lovering v. Dawson* (1875), L. R. 10 C. P. 717.

<sup>17</sup> Parliamentary Elections Act, 1868, s. 8; Election Petition Rules, r. 13, p. 359, *infra*.

<sup>18</sup> General Rules (Scotland), r. 5.

<sup>19</sup> (1874), L. R. 9 C. P. 605.



B., would neither resign nor disclaim the office, it was not open to him to say that he was not properly made a respondent.<sup>20</sup>

#### ART. 41.—Application to Stay the Proceedings or Dismiss the Petition.

*Any application to stay the proceedings or dismiss the petition must be made by way of motion, of which due notice must be given to the petitioner, who has the right of being heard and of giving any explanation that he may have to give with regard to the allegations made against him.*<sup>21</sup>

#### ART. 42.—Withdrawal of Petition.

*A petition cannot be withdrawn without the leave of the Court (which must consist of two judges). Such leave must be obtained by special application.*<sup>22</sup> *No such application can be made for the withdrawal of a petition until notice has been given, in the county or borough to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition.*<sup>23</sup> *Such notice must be in writing and signed by the petitioners or their agent.*<sup>24</sup> *It must state the ground on which the application is intended to be supported, and must be left at the master's office.*<sup>25</sup> *A copy of such notice must be given by the petitioner to the respondent and to the returning officer, who must make it public in the county or borough to which it relates, and must be forthwith published in at least one newspaper circulating in the place.*<sup>26</sup>

*On the hearing of the application for withdrawal any person, who might have been a petitioner in respect of the election to which the petition relates, may apply to the Court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.*<sup>27</sup>

*The Court may, if it thinks fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is, in the opinion of the Court or judge, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the sub-*

<sup>20</sup> *Per Lord Coleridge, C.J., in Lovering v. Dawson (1875), L. R. 10 C. P. 714.*

<sup>21</sup> *Per Cave, J., in Stepney (Borough) (1886), Judgments, 89.*

<sup>22</sup> *See York (1898), 5 O. & H. 118; Christchurch (1901), ib. 147; Appleby (1906), ib. 237.*

<sup>23</sup> *Parliamentary Elections Act, 1868,*

*s. 35; Parliamentary Elections and Corrupt Practices Act, 1879, s. 2.*

<sup>24</sup> *Election Petition Rules, r. 45, p. 363, infra.*

<sup>25</sup> *Ibid. r. 46.*

<sup>26</sup> *Ibid. r. 47.*

<sup>27</sup> *Parliamentary Elections Act, 1868, s. 35; Parliamentary Elections and Corrupt Practices Act, 1879, s. 2.*

stituted petitioner. If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, must be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution. Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner.<sup>27</sup>

If a petition is withdrawn, the petitioner is liable to pay the costs of the respondent.<sup>27</sup>

Where there are more petitioners than one, no application to withdraw a petition can be made except with the consent of all the petitioners.<sup>27</sup>

In every case of the withdrawal of an election petition the Court shall report to the Speaker whether in its opinion the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so, shall state the circumstances, attending the withdrawal.<sup>28</sup>

The application for withdrawal must be supported by affidavit.<sup>29</sup>

NOTE.—“The withdrawal of an election petition must be by leave of the judge, and if the judge sees that the withdrawal was the result of any compromise to prevent evidence from being brought forward, he ought not to allow a petition to be withdrawn, but he ought, as far as he has power to do so, to insist upon the petition being proceeded with.”<sup>30</sup>

“When an election petition is presented, its very nature and the provisions of the Acts relating to it render it impossible for the Court to sanction any concession which may have the effect of precluding that full disclosure of the facts which it was one of the objects of the statute to provide for, or of preventing that thorough investigation which the Court is bound to make of all the charges relied on by the petitioner, so far as the Court has means of doing so within its reach, and can do so with justice and a due regard to that regularity of procedure which is requisite in the administration of justice.”<sup>1</sup> “In this Act there are provisions which render it impossible, if there are any indications of impurity in the election, to shorten the case by a concession between the parties, and which really compel the judges to sit as long as there is anything which can be brought before them, not only by the

<sup>27</sup> Parliamentary Elections Act, 1868, s. 35; Corrupt Practices Act, 1879, s. 2.

<sup>28</sup> Corrupt Practices Act, 1883, s. 41 (7).

<sup>29</sup> Corrupt Practices Act, 1883, s. 41; and see *York* (1898), 5 O. & H. 118;

*Christchurch* (1901), *ib.* 147; *Appleby* (1906), *ib.* 237.

<sup>30</sup> *Per* Grove, J., in *North Durham* (1874), 3 O. & H. 2.

<sup>1</sup> *Per* Andrews, J., in *North Meath* (1892), 4 O. & H. 187.

parties themselves, but by the officer sitting here in the interests of the public, whose duty it is not to let anything drop which may tell in favour of the theory that there has been improper conduct, so that it may not escape notice or go unpunished, and still more perhaps in order that there may not be that which was an intolerable burden upon a place, namely, commissioners coming down to hold a further inquiry.”<sup>2</sup>

#### ART. 43.—Abatement of Petition.

*A petition is abated by the death of a sole petitioner or of the survivor of several petitioners. The abatement of a petition does not affect the liability of the petitioner to the payment of costs previously incurred.*

*On the abatement of a petition notice of such abatement having taken place must be given in the county or borough to which the petition relates, in the same manner as notice of an application to withdraw a petition, and within one calendar month after such notice is given, or within such further time as the Court may allow, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or judge by motion or summons at chambers to be substituted as a petitioner.*

*The Court may, if it thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.*<sup>3</sup>

*A petition is also abated by a dissolution of Parliament.*<sup>4</sup>

NOTE.—It should be observed that a petition is not abated by the death of a respondent. “This is not a proceeding of a personal nature against a dead man; it is the assertion of a right *in rem*, a right to set aside an undue return, and in no sense falls within the meaning of the maxim *Actio personalis moritur cum personâ*. It is remarkable how carefully the Parliamentary Elections Act, 1868, and the rules, recognise this distinction between an election petition and an ordinary suit or action. The form of the petition given in the rules does not name any respondent or pray any process against anyone. The 37th section of the Act provides that the petition shall abate by the death of a sole petitioner, but there is no abatement whatever by the death of a respondent, but a machinery is provided for substituting a new respondent.”<sup>5</sup>

<sup>2</sup> *Per* Denman, J., in *Ipswich* (1886), 4 O. & H. 71; quoted with approval by Andrews, J., in *North Meath* (1892), 4 O. & H. 187, 188. See also *North Louth* (1911), 6 O. & H. 116—119.

<sup>3</sup> Parliamentary Elections Act, 1868, s. 37; Election Petition Rules, r. 50,

p. 364, *infra*.

<sup>4</sup> *Carter v. Mills* (1874), L. R. 9 C. P. 117; *Marshall v. James*, *ibid.*, 702.

<sup>5</sup> *Per* Lawson, J., in *Tipperary* (1875), 3 O. & H. 23—24.



## ART. 44.—Costs.

*All costs, charges, and expenses of and incidental to the presentation of a petition and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by statute otherwise provided for, must be defrayed by the parties to the petition in such manner and in such proportions as the Court may determine, regard being had to the disallowance of any costs, charges, or expenses, which may, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations, or unfounded objections, on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.<sup>6</sup>*

*The Rules and Regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under the Parliamentary Elections Act, 1868, and under the Corrupt Practices Act, 1883, and the taxing officer shall not allow any costs, charges, or expenses, on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale as between solicitor and client.<sup>7</sup>*

*In Scotland the provisions of the Corrupt Practices Act, 1883, with regard to costs do not apply, but the costs of petitions and other proceedings under the Parliamentary Elections Act, 1868, and under the Corrupt Practices Act, 1883, shall, subject to any regulations which the Court of Session may make by act of sederunt, be taxed as nearly as possible according to the same principles as costs between agent and client are taxed in a cause in that Court, and the auditor shall not allow any costs, charges, or expenses on a higher scale.<sup>8</sup>*

NOTE 1.—*With the exception of such costs, charges, and expenses, as are by statute otherwise provided for. These costs, charges, and expenses are—*

(1) *The expenses of the judge and of his reception by the sheriff or mayor at the place of trial, and of the court and of any witness whom the judge may think fit to call and examine, which are to be paid by the Treasury<sup>9</sup>:*

<sup>6</sup> Parliamentary Elections Act, 1868, s. 41.

<sup>7</sup> Corrupt Practices Act, 1883, s. 44 (3).

<sup>8</sup> *Ibid.* s. 68 (17).

<sup>9</sup> Parliamentary Elections Act, 1868, ss. 28, 30, 31, 32; 42 & 43 Vict. c. 75, s. 2.

(2) The costs of the respondent where the petition is withdrawn, which must then be paid by the petitioner<sup>10</sup>:

(3) The costs of the publication of anything required to be published by the returning officer, which the petitioner must pay in the first instance.<sup>11</sup> They, however, form part of the general costs of the petition, and therefore, if the Court orders the respondent to pay the petitioner his costs, the petitioner would be entitled to repayment of these costs paid to the returning officer:

(4) The costs of objections to the recognisances, which are in the discretion of the judge or of the master,<sup>12</sup> *i.e.* to be paid by the party ordered to pay them, independently of the result of the petition; and in default of such order they are to form part of the general costs of the petition:

(5) The expenses of the solicitor or assistant solicitor to the Treasury.<sup>13</sup>

Under the Corrupt Practices Act, s. 44, the Court has power in certain cases to order the costs to be paid by the county or borough or a particular person. This section provides that where, upon the trial of a petition respecting an election for a county or borough, it appears to the election court that a corrupt practice has not been proved to have been committed in reference to such election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the Court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right, as follows:—

(a) If it appears to the Court that corrupt practices extensively prevailed in reference to the said election, the Court may order the whole or part of the costs to be paid by the county or borough; and

(b) If it appears to the Court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the Court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining or cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons, or any of them, and may order that if the costs cannot be recovered from one or more of

<sup>10</sup> Parliamentary Elections Act, 1868,

<sup>12</sup> *Ibid.* r. 27. p. 360. *infra.*

s. 35.

<sup>11</sup> Election Petition Rules, r. 12,

<sup>13</sup> Corrupt Practices Act. 1883, s. 43 (8).

p. 359, *infra.*

such persons they shall be paid by some other of such persons or by either of the parties to the petition.<sup>14</sup>

The same section provides that, where any person appears to the Court to have been guilty of the offence of a corrupt or illegal practice, the Court may after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the Court in relation to the said offence or to the said person to be paid by the said person.<sup>15</sup>

Under this section the Court in *Rochester*<sup>16</sup> directed that two person whom they had decided to report as guilty of treating should pay so much of the Public Prosecutor's costs as referred to them.

NOTE 2.—*The ordinary rule is that costs follow the event.*<sup>17</sup>—“The intention of the Legislature was to put this question of costs on the same footing as in an ordinary action, and as a general rule the costs ought to be paid by the unsuccessful party.”<sup>18</sup>

“I need hardly say,” said Blackburn, J., in *Bridgwater*,<sup>19</sup> “that in a case like this where the petitioners have succeeded, the ordinary rule is that the petitioners have costs, and as there is no reason to depart from the ordinary rule, the petitioners must have costs.”

What is “the event”?—In *Petersfield*,<sup>20</sup> where there was a claim (1) to unseat the respondent for corruption, and (2) a claim for the seat on a scrutiny, this was regarded as divisible into two cases for purposes of costs, and as the claim to unseat the respondent for corruption failed, the costs of that part of the case were ordered to be paid by the petitioner, before the result of the scrutiny.

*Exceptions.*—There are, however, certain exceptions to the ordinary rule that costs follow the event—(1) If the respondent has committed breaches of the law, though not such as to render the election void<sup>21</sup>; (2) if there was reasonable and probable cause for presenting the petition.<sup>22</sup> On each of these grounds the judges refused to order the petitioner, though unsuccessful, to pay costs.

In *Coventry*<sup>23</sup> Willes, J., said: “As a rule, costs ought to follow the event, and in ordinary actions they almost invariably

<sup>14</sup> Corrupt Practices Act, 1883, 1 O. & H. at p. 7.  
ss. 44 (1), 58.

<sup>15</sup> *Ibid.* s. 44 (2).

<sup>16</sup> (1892), 4 O. & H. 161.

<sup>17</sup> *Barrow-in-Furness* (1886), 4 O. & H. 83; *St. Andrews*, *ibid.* 33; *London-derry*, *ibid.* 104; *Aylesbury*, *ibid.* 64; *Kensington*, *ibid.* 95; *Belfast (West)*, *ibid.* 109; *Worcester*, *ibid.* 154; *Clare (East)*, *ibid.* 166; *Halifax*, *ibid.* 204.

<sup>18</sup> *Per* Willes, J., in *Windsor* (1869),

<sup>19</sup> (1869), 1 O. & H. 116.

<sup>20</sup> 2 O. & H. 99.

<sup>21</sup> *London-derry* (1869), 1 O. & H. 277; *Bolton* (1874), 2 O. & H. 150; *Stroud*, *ibid.* 185.

<sup>22</sup> *Westminster* (1869), 1 O. & H. 96; *Coventry*, *ibid.* 111.

<sup>23</sup> (1869), 1 O. & H. 111; see also *Norwich*, *ibid.* 12; *Tamworth*, *ibid.* 88.



follow it, the exceptions being rare. I did intend to deal with these cases as if they were ordinary suits between party and party. I have, however, become deeply impressed with the feeling that there is a third party, no less interested than those who are immediately engaged in the petition, and that I ought in each case to consider, not merely whether the petition has failed or has succeeded, but whether upon the whole I think there are grounds, not founded merely upon the truthfulness of witnesses but founded upon the very character and history of the transaction, upon which it was for the public benefit that the petition should be presented, and upon which I think that the petitioners have had reasonable and probable cause for instituting the inquiry. I shall say no more upon that point, unless it is desired that I should do so. I think this is a case in which a petition has been most reasonably presented and prosecuted; and, therefore, I say nothing about the costs, although the petitioner has in the end, in my mind, altogether failed of arriving at the result of unseating the members."

In *Salisbury*<sup>24</sup> Manisty, J., said: "As a rule costs follow the event, but in this case I think there are exceptional circumstances which fully justify us in the conclusion at which we have arrived. I think the conduct of the respondent's agents in employing so many paid voters, and the illegal act of the respondent's election expenses agent, in not complying with the Act of Parliament by sending to the returning officer a detailed statement of all the election expenses, with the bills and vouchers relating to them, including, as it ought, the list of all the persons employed in any paid capacity on behalf of the candidate, fully justified the petitioners in instituting and in prosecuting this inquiry. If authority be needed to support this view there is abundant authority, but it is unnecessary for me to refer to it. Then there is the admitted fact that the election expenses agent purposely . . . withheld the particulars required by the Act of Parliament because a petition was imminent or pending."

On the other hand, the successful petitioner has been deprived of costs in consequence of his own improper conduct—(1) in delivering misleading or oppressive particulars<sup>25</sup>; (2) in making unfounded charges<sup>26</sup>; (3) in not sufficiently preparing his case and so wasting time<sup>27</sup>; (4) in presenting a fishing petition.<sup>28</sup>

The Court may order the costs of part of the case to be paid by either party if such costs have been caused by improper evidence,<sup>29</sup>

<sup>24</sup> *Salisbury*, 4 O. & H. 30, 31.

<sup>25</sup> *Hereford* (1869), 1 O. & H. 197; *Norwich* (1871), 2 O. & H. 42; *Bristol* (1870), 2 O. & H. 28; *Pontefract* (1893), 4 O. & H. 201.

<sup>26</sup> *Westbury* (1869), 1 O. & H. 56;

*Longford* (1870), 2 O. & H. 17.

<sup>27</sup> *Wallingford* (1869), 1 O. & H. 61.

<sup>28</sup> *Poole* (1874), 2 O. & H. 127.

<sup>29</sup> *Kidderminster* (1874), 2 O. & H. 178.

or unnecessary charges,<sup>30</sup> or preparing for a scrutiny which has been abandoned,<sup>1</sup> or matters in respect of which no evidence is offered,<sup>2</sup> or charges which have failed.<sup>3</sup>

NOTE 3.—*The taxing officer shall not allow any costs, charges, or expenses, on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale as between solicitor and client.*<sup>4</sup>

The rule<sup>5</sup> of January, 1902, provides that, "On every taxation the taxing master shall allow all such costs, charges and expenses, as shall appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses."

The effect of this rule is to provide that the first consideration for the taxing master is to decide what costs have been necessarily incurred for the attainment of justice or defending the rights of the parties, and his discretion is not affected by any other limiting rule save so far as he may be entitled to regard such rules as may guide him in exercising his discretion. The rule applies to taxation as between solicitor and client.<sup>6</sup>

<sup>30</sup> *Stroud* (1874), 3 O. & H. 12.

<sup>1</sup> *Norwich* (1869), 1 O. & H. 12; *Bowdley*, *ibid.* 21; *Westbury*, *ibid.* 56.

<sup>2</sup> *Ipswich* (1886), 4 O. & H. 75.

<sup>3</sup> *Meath (North)*, Judgments, 42; *Meath (South)*, *ibid.* 37.

<sup>4</sup> Corrupt Practices Act, 1883, s. 44 (3).

<sup>5</sup> O. 65, r. 27 (29); cf. O. 65, r. 9.

<sup>6</sup> *Per Cozens-Hardy*, L.J., in *McIver v. Tate Steamers, Ltd.* (1902), 2 K. B.

184 (C. A.). See also *In re Ermen* (1903), 2 Ch. 156; *Manchester Corporation v. Sugden* (1903), 2 K. B. 171 (C. A.); *Stewart v. Weber* (1903), 89 L. T. 559; *Cavendish v. Strutt* (1904), 1 Ch. 524; *Re Bradshaw*. *Bradshaw v. Bradshaw* (1902), 1 Ch. 436, 450; *Re Burroughs, &c.* (1905), 22 R. S. C. 164; *Peel v. L. & N. W. Ry. Co.* (1907), 1 Ch. 607.

## APPENDIX I.

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### ON THE CONDUCT AND TRIAL OF AN ELECTION PETITION.

ALL petitions under the Parliamentary Elections Act, 1868, must be presented in England to the King's Bench Division of the High Court of Justice and in Scotland to either division of the Inner House of the Court of Session.<sup>1</sup>

Petitions are presented by leaving them within the prescribed time<sup>2</sup> at the office of the Master of the King's Bench Division nominated by the Lord Chief Justice of England, and the master must, if required, give a receipt.<sup>3</sup>

In practice at least four copies of the petition are left, but they need not be on parchment as the original should be, though there is no rule making this compulsory.

The official in Scotland who corresponds for this purpose to the master in England is such one or more of the principal clerks of Session as may be determined by the Lord President of the Court of Session.<sup>4</sup>

With the petition must also be left—(1) a copy thereof for the master to send to the returning officer pursuant to sect. 7 of the Parliamentary Elections Act, 1868;<sup>5</sup> and (2) a writing signed by the petitioners or on their behalf, giving the name of their agent, or stating that they act for themselves, as the case may be, and in either case giving an address within three miles from the General Post Office at which notices addressed to them may be left.<sup>6</sup>

On presentation of the petition the master must send a copy thereof to the returning officer of the county or borough to which the petition relates, who must forthwith publish the same in the county or borough, as the case may be.<sup>7</sup>

In Scotland the principal clerk must upon presentation of the petition forthwith send a copy of it to the returning officer in pursuance of sect. 7 of the Act,<sup>8</sup> but the petitioners are not required, as in England, by the rules to leave a copy of the petition for that purpose with the principal clerk.

*Service of petition.*—Service is effected by service of a notice of the presentation of the petition accompanied by a copy of the petition, within five days of the presentation (exclusive of the day of presentation, and Sunday, Christmas Day, Good Friday and any day set apart for a public fast or public thanksgiving), by registered post to the address given, or delivery to the agent where the respondent has filed a notice of the appointment of an agent, the letter being posted at such time that in ordinary

<sup>1</sup> Parliamentary Elections Act, 1868, ss. 5, 58 (1), amended as to England by 36 & 37 Vict. c. 66, s. 32; and see Order in Council, December 16, 1880; and see Order in Council, July 6, 1887.

<sup>2</sup> See p. 203, *supra*.

<sup>3</sup> Parliamentary Elections Act, s. 6; General Rules (England), r. 1. These

Rules are set out in Appendix III., p. 357, *infra*.

<sup>4</sup> Parliamentary Elections Act, 1868, c. 58, s. 12.

<sup>5</sup> General Rules (England), r. 1.

<sup>6</sup> *Ibid.* r. 9.

<sup>7</sup> *Ibid.* r. 7.

<sup>8</sup> General Rules (Scotland), r. 15.



course of post it would be delivered within the prescribed time.<sup>8</sup> In all other cases service must be personal, but where reasonable efforts have been made in vain to effect personal service and cause the petition to come to respondent's knowledge, including (where practicable) service upon the election agent, a judge, on an application made not later than five days after presentation of petition supported by affidavit as to what has been done, may make an order, subject to conditions, that what has been done constitutes sufficient service. If evasion can be shown, the judge may order the posting of a notice on a board in the master's office (stating presentation of petition, name and address of petitioner, prayer of the petition, and nature of proposed security) to be deemed equivalent to personal service.<sup>9</sup>

*Service of nature of security.*—With service of notice of presentation of petition a notice of the nature of the proposed security must be served.<sup>10</sup>

*Affidavit of service.*—The petitioner or his agent must immediately after service of the notice of the presentation of the petition, and of the nature of the proposed security, file with the master an affidavit of the time and manner of service thereof.<sup>11</sup>

Service within the prescribed time is a condition precedent to trial of a petition and the time cannot be extended.<sup>12</sup>

*Service of other notices and proceedings.*—With the petition petitioners shall leave at the office of the master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney or agent in cases of election petitions whom they authorise to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings may be given by sticking up the same at the master's office.<sup>13</sup>

Any person returned as a member may at any time after he is returned send or leave at the office of the master a writing, signed by him or on his behalf, appointing a person entitled to practise as an attorney or agent in cases of election petitions to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address, within three miles from the General Post Office, at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.<sup>14</sup>

An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the master, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.<sup>15</sup>

*Computation of time.*—The days mentioned in any rule of Court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.<sup>16</sup> When the last day for presenting petitions, or filing lists of votes or objections, or recognisances, or any other matter

<sup>8</sup> Parliamentary Elections Act, 1868, ss. 8, 21; General Rules (England), rr. 13, 14; Additional General Rules (England), 1875, r. 3, p. 366, *infra*.

<sup>9</sup> General Rules (England), rr. 14, 15.

<sup>10</sup> Parliamentary Elections Act, 1868, s. 8; General Rules (England), r. 13.

<sup>11</sup> Additional General Rules (Eng-

land), 1875, r. 2, p. 366, *infra*.

<sup>12</sup> *Williams v. Mayor of Tenby*, 5 C. P. D. 135.

<sup>13</sup> General Rules (England), r. 9.

<sup>14</sup> *Ibid.* r. 10.

<sup>15</sup> *Ibid.* r. 59.

<sup>16</sup> Additional General Rules (England), 1875, r. 3, p. 366, *infra*.

required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.<sup>17</sup>

*Hearing of interlocutory proceedings—application to be made generally to judge on rota where possible.*—All interlocutory questions and matters, except as to the sufficiency of the security, must be heard and disposed of by one of the judges upon the rota, if practicable, and if not, then by any judge at chambers.<sup>18</sup>

Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.<sup>19</sup>

Such hearing and decision may be either upon affidavit or personal examination of witnesses or both, as the master or judge may think fit.<sup>20</sup>

*Payment out of Court of security for costs.*—The application for such payment is made by summons to one of the judges on the rota, supported by an affidavit reciting the presentation of the petition and result, and stating that the returning officer's charges under rule 12 have been paid and that all other claims against the petitioner have been paid.<sup>21</sup> Sometimes where the petitioner is ordered to pay costs payment out is allowed before taxation of costs if the other side consent.

*What a petition must contain.*—The petition must state the right of the petitioner to petition within sect. 5 of the Parliamentary Elections Act, 1868, and the holding and result of the election, and the facts and grounds relied on to sustain the prayer.<sup>22</sup>

The petition must be divided into paragraphs, each of which, as nearly as may be, must be confined to a distinct portion of the subject, and every paragraph must be numbered consecutively.<sup>23</sup>

The petition must conclude with a paper, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, as the case may be, and must be signed by the petitioner or petitioners.<sup>24</sup>

Care should be taken to draw the petition in such a way as to enable the petitioner to bring forward all the charges on which he means to rely, for the petition may limit the charges to be brought, and if the charges are limited by the petition the judges have no power to extend them.<sup>25</sup>

"I should much prefer," said Bruce, J., in *Lancaster*,<sup>26</sup> "to see in a petition, instead of a general allegation of corrupt and illegal practices, separate paragraphs setting out the character of the offences charged against the respondent, so that he might be informed from the first of the general character and nature of the charges preferred against him."

*Particulars.*—The Court may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial, in the same way as in ordinary proceedings in the King's Bench Division in the High Court of Justice, and upon such terms as to costs and otherwise as may be ordered.<sup>27</sup>

Where the petition is drawn in such a way as to make it uncertain what are the precise charges alleged, it is the practice to order immediately particulars in writing of the nature and character of the charges alleged. Such particulars are known as "short particulars," and the order usually requires these particulars to be ordered within seven days.<sup>28</sup> For the form of such an order, see p. 402, *infra*.

<sup>17</sup> Additional General Rules (England), 1875, r. 4, p. 366, *infra*.

<sup>18</sup> General Rules (England), r. 44.

<sup>19</sup> *Ibid.* 23.

<sup>20</sup> *Ibid.* 24.

<sup>21</sup> Additional General Rules (England), 1869, rr. 2, 3, p. 366, *infra*.

<sup>22</sup> General Rules (England), r. 2.

<sup>23</sup> *Ibid.* r. 3.

<sup>24</sup> *Ibid.* r. 4.

<sup>25</sup> *Per* Cave, J., in *Manchester* (1892), Judgments, 101.

<sup>26</sup> (1896), 5 O. & H. 41, 42.

<sup>27</sup> General Rules (England), r. 6.

<sup>28</sup> *Lancaster* (1896), 5 O. & H. 39; *Shoreditch*, *ibid.* 68.



A petitioner will also be ordered to give full particulars of charges specified. These particulars are known as "long particulars," and are now usually ordered to be delivered ten days before the trial if there be under eighty charges, or twelve days if over eighty charges, or sixteen days if over 120 charges. There is, however, no inflexible rule of practice as to the period before the day appointed for trial at which such particulars must be delivered; the time to be fixed for their delivery must depend on the particular circumstances of each case.<sup>29</sup> For form of order, see p. 403, *infra*.

"No particulars ought to be delivered," said Cave, J., in *Pontefract*,<sup>30</sup> "unless the petitioner has in his possession some evidence in support of them which he can lay before the Court. Suspicion is not sufficient to justify the insertion of a charge in the particulars. That may justify the wideness of the petition, but it does not justify the wideness of the particulars, because they are intended to give the respondent notice of what are the charges which are intended to be proved against him, and it is necessary for his defence that he should at once incur the expense of investigating those cases and of preparing himself for trial." And, again, in *Manchester*<sup>1</sup> the same judge said: "Those who draw particulars should understand they are not at liberty to throw charges about broadcast, but should confine themselves, as far as can reasonably be done, to those charges which they actually have the means, or expect to have the means, of establishing at the trial."

Special care should be taken not to insert any allegation that the respondent has been personally guilty of corrupt practices, unless there be some very good grounds to support it.<sup>2</sup>

In *Montgomery*<sup>3</sup> Wills, J., said: "I am very sorry that such a multitude of particulars has been put in in this case. They go far beyond any of the evidence in the possession of the petitioners. The result is an outpouring of expense; every one of those cases must be investigated. To force the respondent to investigate and meet a great number of cases which are not to be proceeded with is very unfair to him." And in *Worcester*<sup>4</sup> the same judge said: "To deliver particulars which contain nothing but the name of the candidate and the character of the offence suggested and leave everything else in blank, and to attempt under them to fish out some possible material from which the blank may be filled up, is an abuse of procedure."

Where, however, the petitioner does not seek to have the election declared void, but merely claims the seat, alleging that he (the unsuccessful candidate) had a majority of legal votes, and asks for a scrutiny and recount of the votes, rule 6 of the Petition Rules (which is set out p. 217, *supra*, and p. 358, *infra*) as to ordering particulars does not apply. In such a case rule 7<sup>5</sup> is exclusively applicable, and therefore an order for particulars cannot be made.<sup>6</sup>

*Time within which additional particulars may be given, and what they may contain.*—As has been pointed out on p. 203, *supra*, the petition must be delivered within a specific and limited time under the Parliamentary Elections Act, 1868, s. 6, and the Corrupt Practices Act, 1883, s. 40; and sufficient particulars of the matters relied on to prevent surprise and unnecessary expense must be stated in the petition, or may be ordered by the Court.

Where particulars have been delivered they can be amended by leave of the Court, so as to cover other charges within the petition where the omission is due to the fact that the other charges had not been discovered

<sup>29</sup> *Rushmere v. Isaacson* (1893), 1 Q. B. 118.

<sup>30</sup> (1892), 4 O. & H. at p. 202.

<sup>1</sup> (1892), *Day's Election Cases*, 153, 154.

<sup>2</sup> *Per Hawkins, J.*, in *Tewkesbury* (1880), 3 O. & H. 99.

(1892), *Day's Election Cases*, 152.

<sup>4</sup> (1892), *ibid.* 88.

<sup>5</sup> Set out on p. 358, *infra*.

<sup>6</sup> *Munro v. Balfour* (1893), 1 Q. B. 113; *Furness v. Beresford* [1898], 1 Q. B. 495.



when the particulars were delivered,<sup>7</sup> or where the omission is caused by mistake.<sup>8</sup> The application for leave to amend must be made on affidavit.<sup>9</sup>

"The Court ought not to allow particulars to be amended in such a way as to bring in charges which were not pointed out by the petition. Charges in an election petition are of a very serious nature, and cannot be dealt with in the same way as particulars in a civil action. It is the duty of the Court to see that such charges should be formulated in definite form, and should not be brought by the petitioners, from time to time, after the expiration of the statutory period fixed by the Act of Parliament."<sup>10</sup>

In *St. George's Division*<sup>11</sup> the Court granted the petitioner leave to amend his particulars on the ground that the amendment asked for was not an amendment in point of fact, but for the purpose of supplying a mere mechanical and accidental defect.

In *Dublin*<sup>12</sup> Keogh, J., said as to the amendment of particulars: "It is right that, following the principles of the House of Commons, lists of particulars should be given, but I will not shut out the parties in any fair case from going beyond the list. . . . I shall allow the utmost latitude to amend, unless it is a case in which I see that the party kept back information at the time the list was furnished."

In *Longford*<sup>13</sup> Fitzgerald, J., said: "On an application for leave to amend particulars in consequence of facts subsequently discovered, I would not hesitate, in case, for instance, of bribery or undue influence, to give the utmost latitude to petitioners, even though the name be not in the bill of particulars . . . but as to this case of individual treating, which may be quite capable of explanation, and which ought to have been inquired into beforehand, I do not think I ought to depart from the ordinary practice. Though I am here to represent the public, there are individual interests concerned, and even the public may be injured by inquiry into a matter as to which there is no opportunity of giving an explanation."

On the application to insert a fresh name in the particulars, Hughes, B., in *Waterford*,<sup>14</sup> said: "It cannot be done as a matter of course, but, on the other hand, I will not shut out any evidence that could be given, unless I see clearly that it would be taking some unfair advantage of the opposite party. What we did on the last trial here was this, when a name was mentioned as an important name, which was not in the particulars, notice was required to be served for the next morning to amend in respect of that particular name, and then inquiry was made on the oath of the attorney as to when he heard the name first."

In *Bristol*<sup>15</sup> it was objected that the name of the person alleged to have been bribed was not in the particulars delivered, and Bramwell, B., said: "I do not like to shut out any evidence. It is not in accordance with the order, but I shall not disallow it, because, as there is no jury, I should prefer to hear the evidence; and if I see any improper prejudice towards the respondent I shall know how to deal with it. . . . If I come to the conclusion that the suppression of the name has been wilful, I shall know what value to put upon the rest of the evidence given as to this matter; and if I find that any injury has been sustained by the respondent, I must endeavour to make amends to him in some way or other by giving him every opportunity of making inquiry into the case, but as at present advised I am resolved to admit the evidence."

It is not, however, open to the petitioner to introduce into his particulars a fresh charge not within the petition,<sup>16</sup> nor can he, after the time for delivering particulars under an order of the Court has expired,

<sup>7</sup> *Pontefract* (1893), Day's Election Cases, 15.

<sup>8</sup> *Harwich* (1880), 3 O. & H. 61; 44 L. T. 187.

<sup>9</sup> *Wigan* (1869), 1 O. & H. 189.

<sup>10</sup> *Per Bruce, J., in Lancaster* (1896), 41, 42.

<sup>11</sup> (1895), 5 O. & H. 90; see also

*Londonderry* (1869), 1 O. & H. 275.

<sup>12</sup> (1869), 1 O. & H. 271, 272.

<sup>13</sup> (1870), 2 O. & H. 9.

<sup>14</sup> (1870), 2 O. & H. 25.

<sup>15</sup> *Ibid.* 28.

<sup>16</sup> *Montgomery* (1892), Day's Election Cases, 15.

deliver additional particulars containing a fresh charge not covered by particulars already delivered. The latter question was raised in *Lancaster*,<sup>17</sup> and Pollock, B., said: "The point we have to decide involves a very important question—and it is the first time that it has been broadly raised—as to within what time particulars may be allowed to be given and in what aspect the Court is to look upon those particulars. . . . The present petition has been drawn up in a general form, and no one has a right to gain any indirect advantage by reason of its being so drawn. . . . It would be dealing extremely harshly if time and advantage were given to the petitioners by reason of the general form in which the petition has been brought. That was not the intention of the Act, and we must see that we do nothing contrary to it. The intention of the Act was, as shown by sect. 40, to limit the time within which charges could be made. The additional particulars must be struck out."

In *Manchester*<sup>18</sup> it was held that, where the petition contains charges of general treating, it is necessary to give in the particulars every particular street in which it is alleged that drunkenness went on, and therefore evidence was held to be inadmissible as to a certain public-house, where such public-house had not been mentioned in the particulars. On the other hand, in *Beverley*,<sup>19</sup> Martin, B., allowed proof of a system of corruption to be illustrated by particular cases not named in the particulars; and in *Wigan*<sup>20</sup> it was held that in order to support an allegation of general treating names of persons treated need not be given in the particulars.

Where the petitioners are under the order for particulars precluded at the trial of the petition from going into any case of which the aforesaid particulars have not been delivered, "they must," said Grove, J., in *Wigan*,<sup>21</sup> "give particulars of the time and place and persons, so far as they can, where the alleged drinking or the alleged bribery has taken place. Of course, the particulars of bribery must be more specific than the particulars of drinking, because you do not bribe hosts of people generally. I think that . . . it would be open to us to allow evidence to be given that other persons were there and that there was general drinking. . . . Of course, general corruption can only be established by a considerable number of cases being proved, and we are the judges of that. One case would not do it, and three might not; but if it came to twenty or thirty it might amount to general treating. I do not see how that can possibly be shown except by admitting this evidence."

In the same case, Bowen, J., said<sup>22</sup>: "The object of these particulars is simply to prevent surprise and unnecessary expense. . . In this case full particulars have been given, a number of names have been given of persons who are supposed to have been treated or bribed at particular places, and at the end of the list of names comes this, that persons are supposed to have been bribed whose names are at present unknown; and the persons who are presenting the election petition may really be *bonâ fide* ignorant of the names of the persons who were receiving bribes or being treated at that particular place; and they ought not to be prevented from going into those cases simply because they cannot give the names of the persons with respect to whom the criminal act is supposed to have been committed. What they are bound to do is to tell the most they can at the time these particulars are given; and at all events, before the trial, to tell as much as they can to put the sitting member and his counsel upon inquiry, and to prevent surprise or expense. . . . Grove, J., has pointed out that this is not a fresh case which is being started, and his observations are in accordance with what I find in the judgment of Martin, B., in *Beverley*, where he points out that the object of the particulars is not to limit the witnesses called, but merely to limit the acts relied upon for the purpose of unseating the respondent. I should be perfectly prepared to

<sup>17</sup> (1896), 5 O. & H. at p. 41.

<sup>18</sup> (1892), 4 O. & H. 121.

<sup>19</sup> (1869), 1 O. & H. 143.

<sup>20</sup> (1869), 1 O. & H. 189.

<sup>21</sup> (1881), 4 O. & H. 2, 3.

<sup>22</sup> (1881), 4 O. & H. 3, 4.



take broader grounds and to say that a judge sitting here to try the election petition can at any moment receive any evidence, provided he takes care that there is no surprise upon the sitting member by its being tendered."

*Amendment of petition.*—Any election petition presented within the time limited by the Parliamentary Elections Act, 1868, may for the purpose of questioning the return or the election upon an allegation of an illegal practice be amended with the leave of the Court within the time within which a petition questioning the return upon the allegation of that illegal practice can be presented.<sup>23</sup> This applies in the case of an offence relating to the return and declarations respecting election expenses in like manner as if it were an illegal practice, and also applies notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.<sup>24</sup>

An amendment will also be allowed in respect of an illegal payment, employment or hiring which was not an illegal practice.<sup>25</sup> The application to amend must be made to one of the election judges.<sup>26</sup>

A petition cannot be amended by introducing new charges after the time for presenting a petition relating to such new charges has elapsed.<sup>27</sup>

An amendment in the petition will not be allowed in the course of the case, where the proposed amendment would amount to a virtual amendment of the petition. In *Manchester*<sup>28</sup> the Court refused to allow an amendment which would have allowed the petitioner to rely upon an offence under sect. 7 of the Corrupt Practices Act, 1883, where the petition clearly pointed to an offence under sect. 14.

*Commission.*—A commission may be issued to examine a witness who is too ill to attend the trial.<sup>29</sup> Where such a commission is ordered during the trial, the examination usually takes place before the Registrar of the Court.<sup>30</sup> In *Exeter*, Bucknill, J., in chambers, on the 15th March, 1911, ordered the examination of a witness who was leaving England before the trial. The shorthand writer must attend the examination.<sup>1</sup> In *Hartlepool* (1910) and *East Dorset* (1910) it was suggested by the Court that where the registrar takes the evidence of a witness under a commission at the same time as the election court is sitting, the court should appoint a deputy registrar to sit in the temporary absence of the registrar.

The Court has no power to make a general order for discovery of documents<sup>2</sup> or for interrogatories to be administered.<sup>3</sup>

*Inspection of documents.*—Under the Ballot Act, 1872, Sched. 1, rr. 40, and 41, an order can be obtained for inspection of—(1) rejected ballot papers; (2) counted ballot papers; (3) counterfoils. On making and carrying into effect any such order, care must, however, be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent Court to be invalid.<sup>4</sup>

The practice of granting inspection of documents under the Ballot Act is to be regulated by the same rules as in ordinary cases, subject to due precautions being taken to ensure secrecy of voting.<sup>5</sup>

An application for inspection of rejected ballot papers must be made

<sup>23</sup> Corrupt Practices Act, 1883, s. 40 (2).

<sup>24</sup> *Ibid.* s. 40 (3).

<sup>25</sup> *Buckrose* (1886), 4 O. & H. 116—117.

<sup>26</sup> *Shaw v. Reckitt* [1893], 1 Q. B. 779.

<sup>27</sup> *Maude v. Lowley* (1874), L. R. 9 C. P. 165; *Aldridge v. Hurst* (1876), 1 C. P. D. 410; *Clarke v. Wallond* (1883), 52 L. J. Q. B. 321; *Birkbeck v. Bullard* (1886), 2 T. L. R. 273.

<sup>28</sup> (1892), 4 O. & H. 121.

<sup>29</sup> *Wallingford* (1869), 1 O. & H. 57; *Stalybridge*, 17 L. T. N. S. 703. Approved in *Wells v. Wren*, *infra*.

<sup>30</sup> *Wallingford* (1869), 1 O. & H. 57.

<sup>1</sup> 31 & 32 Vict. c. 125, s. 241.

<sup>2</sup> *Moore v. Kennard* (1883), 10 Q. B. D. 290.

<sup>3</sup> *Wells v. Wren* (1880), 5 C. P. D. 546.

<sup>4</sup> Ballot Act, 1872, Sched. 1, r. 41.

<sup>5</sup> *Per Brett, J.*, in *Stowe v. Jolliffe* (1874), L. R. 9 C. P. at p. 454.



to a judge at chambers,<sup>6</sup> and from his order an appeal would lie to the Court. In the case of an application for inspection of counted ballot papers or counterfoils, the application must be made direct to the Court.<sup>7</sup>

In *Tyrone*<sup>8</sup> an order was made that the Clerk of the Crown should open the sealed packet of rejected ballot papers, and permit the petitioner to inspect certain ballot papers alleged to have been wrongly rejected by the returning officer on the ground that there were marks on them by which the voters could be identified; but the petitioner was not allowed to see the numbers on the back of the ballot papers corresponding with those on the counterfoils.

A strong case must be made on affidavit before an order can be obtained for inspection of ballot papers or counterfoils.<sup>9</sup>

All documents forwarded by the returning officer to the Clerk of the Crown are open to inspection under certain prescribed regulations,<sup>10</sup> without an order; and the petitioner will be allowed to inspect the marked register of voters whether the petition does or does not pray for a scrutiny.<sup>11</sup> Where the marked register was by mistake returned to the Clerk of the Crown in the same sealed packet with the counterfoils the Court granted an order for its inspection.<sup>12</sup>

The Court has power to make an order for the production of telegrams by the Post Office authorities.<sup>13</sup> Care should be taken to make the notice to produce sufficiently full and particular.

In *Westminster*,<sup>14</sup> where notice had been given to produce "all documents, books, and papers whatsoever and in any wise relating to the matters in question in this case," Martin, B., held "that the notice covered every document which *ought* to be filed, and *ought* to be delivered to the returning officer," but that the notice was too general to include all papers relating to the matter without being further particularised.

*Recount.*—A petition may be lodged claiming the seat on the ground that the petitioner had a majority of lawful votes, but praying only for a recount of the votes without alleging any corrupt or illegal practice or asking for a scrutiny. In such a case the petition does not go to trial, but the practice is to issue a summons at the Elections Petitions Office, returnable before one of the election judges applying for an order that the votes may be recounted before the assistant to the prescribed officer. The application should be supported by affidavit showing grounds for supposing there has been a miscount. Where the majority is a very small one the application is, as a rule, allowed almost as of course. The order<sup>15</sup> should provide for the production at the Election Petitions Office of all the counted, rejected, and tendered votes (though the last named cannot be inspected), and for the officer before whom the recount is conducted to report to the election judges the result of the recount. It should also contain a clause that the case raised by the petition be stated as a special case by the officer taking the recount at the request of either party. Upon the date fixed by the officer for the recount to take place, the votes which have been counted by the returning officer in the respondent's favour are generally examined first by counsel for the petitioner. When "ten" good votes are admitted by him the number is checked by counsel for the respondent, and the votes handed to the presiding officer as admitted by both sides. Any vote which counsel may consider doubtful is reserved till all the admittedly good votes have been counted. A similar process is then gone through with regard to the petitioner's votes. The votes which have

<sup>6</sup> Ballot Act, 1872, First Sched. r. 40; *Stowe v. Jolliffe* (1874), L. R. 9 C. P. 445, 446; *Tyrone* (1873), 7 Ir. R. C. L. 190.

<sup>7</sup> *Ibid.* r. 41.

<sup>8</sup> *Tyrone*, *supra*.

<sup>9</sup> *Stowe v. Jolliffe* (1874), L. R. 9 C. P. 446.

<sup>10</sup> Ballot Act, 1872, Sched. 1, r. 42.

<sup>11</sup> *Ibid.* Sched. 1, Pt. 1, r. 42; *James v. Henderson* (1874), 43 L. J. C. P. 238.

<sup>12</sup> *Stowe v. Jolliffe* (1874), L. R. 9 C. P. 459.

<sup>13</sup> *Harwich* (1880), 3 O. & H. 62, 63.

<sup>14</sup> (1869), 1 O. & H. 93.

<sup>15</sup> For Form of Order, see p. 407, *infra*.

been reserved on either or both sides and the votes which have been rejected by the returning officer are then examined and discussed. The presiding officer's opinion may be asked as to any vote, but is not binding upon either side. Any votes which may finally be in dispute are then reserved for consideration by the Election Court, and the number of admittedly good votes for both agreed upon. The parties are allowed to have copies or photographs of the reserved ballot papers upon payment of the proper fees. If the result is still doubtful or there appears to be a majority in any event for the petitioner the presiding officer is asked to state the case raised by the petition in the form of a special case dealing specifically with the admitted and disputed papers. This is necessary because it is only where the petition is turned into a special case or goes to trial that the Election Court can declare the petitioner duly elected. If the result shows that the petitioner must have the minority of votes in any event, the usual course is for him to apply to the Court for leave to withdraw the petition. The officer taking the recount then reports the result to the Election Court, before whom the application is heard, and a special case is not necessary. Though in *North Lonsdale* (1910), *Times*, April 23, where the petition prayed only for a recount, the officer who took the count (which resulted in an increased majority for the respondent) stated a special case for the Court, who thereupon heard the same and declared the respondent duly elected and dismissed the petition with costs. If a special case is stated it is drawn by the presiding officer, and set down for hearing by the petitioner (fees £2 on *præcipe* and £1 on case). A day is fixed for the hearing before two of the election judges who deal *seriatim* with the reserved votes and dismiss or grant the petition, as the case may be. Only one counsel on each side has a right to be heard.<sup>16</sup> Where a recount is asked for as one only of the incidents of the petition,<sup>17</sup> the presiding officer is merely ordered to report to the Court before whom the petition will be tried, and the report is dealt with at the trial together with the other matters alleged in the petition. In such a case there is no need for the petition to be turned into a special case.

*Venue*.—By the Parliamentary Elections Act, 1868, s. 11 (11), the trial of an election petition, in the case of a petition relating to a county or borough election, shall take place in the county or borough respectively: "provided always, that if it shall appear to the Court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the county or borough, it shall be lawful for the Court to appoint such other place for the trial as shall appear most convenient." Such "special circumstances" exist where the allegations of fact in a parliamentary election petition are not in dispute, but are specifically admitted by the respondent so as to render it unnecessary at the trial to call witnesses from the district in which the election took place.<sup>18</sup> There are, however, no such "special circumstances" in the fact that the inquiry is of such a nature that the trial can be more cheaply and conveniently held elsewhere.<sup>19</sup>

In the case of a petition relating to any of the boroughs within the metropolitan district, the petition may be heard at such place within the district as the Court may appoint<sup>20</sup>; in practice such petitions are usually tried at the Royal Courts of Justice.

Where there is a Court conveniently situate, but, strictly speaking, without the borough or county, application should be made to the Court that the trial take place at such convenient Court.<sup>21</sup>

<sup>16</sup> *Ackers v. Howard* (1886), 16 Q. B. D. 746.

<sup>17</sup> See Form of Order, p. 406, *infra*.

<sup>18</sup> *Arch v. Bentinck* (1887), 18 Q. B. D. 548.

<sup>19</sup> *Lawson v. Chester Master* [1893], 1 Q. B. 245. See also *Sligo* (1869), 1

O. & H. 300; *Collins v. Price* (1880), L. R. 5 C. P. D. 544.

<sup>20</sup> Parliamentary Elections Act, 1868, s. 11 (11).

<sup>21</sup> An application of this kind was made in *Maidstone* (1906) (*Times*, April 10), and granted by Grantham, J.



The application to change the venue should be to the Court and not to the judge in chambers.<sup>22</sup>

The time and place of trial is fixed by the judges on the rota.<sup>23</sup>

*Trial to take place before two judges of the King's Bench Division.*—The trial of every election petition takes place before two judges of the King's Bench Division of the High Court of Justice, who are selected from a rota which is formed every year.<sup>24</sup>

The judges have the same powers, jurisdiction, and authority, as a judge of one of the superior courts and as a judge of assize and *nisi prius*, and the court held by them is a court of record.<sup>25</sup>

The Court may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the Court may direct to be sent to the returning officer, as the case may be, postpone the beginning of the trial to such day as they may name, and such notice when received must be forthwith made public by the returning officer.<sup>26</sup>

In the event of the judges not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.<sup>27</sup>

No formal adjournment of the Court for the trial of an election petition is necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.<sup>28</sup>

*Proof of election.*—It is customary to dispense with formal proof that an election has been held, and in one case,<sup>29</sup> where counsel for the respondent contended that this must be strictly proved, Willes, J., said: "I shall not require the election to be proved in any of these cases: the poll books are here, and they tell me that an election was held."

*Scrutiny.*—When the petition claims the seat for the unsuccessful candidate, alleging that he had the majority of legal votes, the method of ascertaining the truth of the allegation is by a scrutiny of votes.

An inquiry in the form of a scrutiny consists in each party attacking the votes on his opponent's poll and striking off any to which he can establish a fatal objection, apart from the question of non-personal qualification arising from non-residence, &c.,<sup>30</sup> and adding to his own poll any votes of which he was deprived at the counting of the votes, either by reason of votes given for him having been rejected on insufficient grounds, or in consequence of duly tendered votes having been refused.

In order to obtain a scrutiny, it is essential to allege that the person for whom the seat is claimed has a majority of legal votes,<sup>1</sup> and the prayer should ask for a scrutiny.

When a scrutiny is claimed, each party must deliver a list of the votes intended to be objected to. By rule 7,<sup>2</sup> when a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return must, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioners or respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote,<sup>3</sup> and the master must allow inspection and give copies of such lists to all parties concerned; and no evidence may be given against the validity of any vote, nor upon any head of objection, not specified in the list, except by leave of the Court or judge, upon such terms

<sup>22</sup> *Collins v. Price*, *supra*; *Maidstone* (1906), *Times*, April 10.

<sup>23</sup> General Rules (England), r. 31.

<sup>24</sup> Parliamentary Elections Act, 1868, s. 11 (1), (2); 42 & 43 Vict. c. 75, s. 2; 44 & 45 Vict. c. 68, s. 13.

<sup>25</sup> Parliamentary Elections Act, 1868, s. 29.

<sup>26</sup> General Rules (England), r. 34.

<sup>27</sup> *Ibid.* r. 35.

<sup>28</sup> *Ibid.* r. 36.

<sup>29</sup> *Coventry* (1869), 20 L. T. N. S. 406.

<sup>30</sup> See pp. 48—51, *supra*.

<sup>1</sup> *Galway* (1859), Wolf. & Dew. 136; *Trench v. Nolan* (1872), 6 T. R. C. L. 464.

<sup>2</sup> See p. 358, *infra*.

<sup>3</sup> For Form of such list, see Form 59, p. 415, *infra*.



as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered. By rule 8,<sup>4</sup> when the respondent complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue, such respondent must, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master must allow inspection and office copies of such lists to all parties concerned; and no evidence may be given by a respondent of any objection to the election not specified in the list, except by leave of the Court or judge, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

The six days mentioned above are six clear days exclusive of Sundays.<sup>5</sup>

Votes may also be added to the poll if they have been duly tendered at the election: e.g., where a ballot paper has, in consequence of personation or a mistake of the polling clerk, been given to someone not entitled to it and subsequently the elector whose name is on the register tenders his vote<sup>6</sup>; or where the presiding officer refuses to deliver a ballot paper to a person whose name is on the register, on the ground of personal disqualification.<sup>7</sup>

On a scrutiny the inquiry into each vote is dealt with separately.<sup>8</sup> The petitioner opens his case with any class of objections he may select: the respondent answers and the petitioner replies.

When the petitioner has made out a majority by striking off or adding votes, the respondent, if he can, then reduces it by similarly dealing with class after class of objections, and so the scrutiny is continued until one party or the other has no further objections to raise.

If at any time the respondent withdraws from the inquiry, the petitioner must continue to strike off votes until the person for whom the seat is claimed is in a majority; and where the respondent has been unseated, he may, if he can, prove that the petitioner is not entitled to the seat. Thus, in *Norwich*,<sup>9</sup> where S. had been unseated, and it was argued that, in consequence, he had no further *locus standi*, Martin, B., said: "Is not S. a respondent in respect of every matter that you charge in your petition, and in respect of every claim you make in your petition? and has he not a right, as having been a candidate, and though he may be unable to protect his own seat, to show that you are not entitled to it?"

*Votes which the Court will strike off on a scrutiny.*—"The register of voters is conclusive, not merely on the returning officer at the election, but also on the election court holding a scrutiny, except in cases coming within the proviso (at the end of sect. 7 of the Ballot Act, 1872)"<sup>10</sup>—i.e., in the cases of "persons prohibited from voting by any statute or by the common law of Parliament."

These words "do not mean persons who from failure in the incidents or elements of the franchise could be successfully objected to on the revision of the register."<sup>11</sup>

The Court will not, therefore, on a scrutiny strike off the votes of persons merely on the ground that they had not the necessary qualification in one of the incidents or elements of the franchise. "The proviso means persons who from some inherent or for the time irremediable quality in themselves

<sup>4</sup> See p. 358.

<sup>5</sup> *Joyce v. O'Donnell (Galway)* (1874), 22 W. R. 654.

<sup>6</sup> *St. Andrew's* (1886), 4 O. & H. 32; *Stepney Division*, *ibid.* 43; *Cirencester* (1893), 4 O. & H. 194; see also pp. 50, 52, *supra*, and p. 385, *infra*.

<sup>7</sup> See pp. 48—51, *supra*.

<sup>8</sup> See observations of Willes, J., in *Northallerton* (1869), 1 O. & H. 167.

<sup>9</sup> (1869), 19 L. T. N. S. 620.

<sup>10</sup> *Per* Channell, J., in *Pembroke Boroughs* (1901), 5 O. & H. 143; and see the observations of Lord Coleridge, C.J., in *Stowe v. Jolliffe*, cited by Darling, J., in the same case at p. 139.

<sup>11</sup> *Per* Lord Coleridge, C.J., in *Stowe v. Jolliffe*, *supra*; see the judgment of Darling, J., in *Pembroke Boroughs* (1901), 5 O. & H. 141.

have not, either by prohibition of statutes or at common law, the status of parliamentary electors." <sup>12</sup> "In other words, the register is made conclusive as to the qualification, but this is not to entitle anyone to vote who is by statute or the common law of Parliament prohibited from voting even when qualified." <sup>13</sup>

Thus, the Court will strike off on a scrutiny the votes of persons who are disqualified from voting by the common law of Parliament or by statute, whether they are on the register or not. A list of these persons is given in Article 12, p. 47, *supra*.

The Court will also strike off votes on the ground that they have been procured by bribery, treating, or undue influence, or that the voter has been guilty of personation or procuring the same.

"If pressure is put upon a man or a bribe is administered to him, no matter by whom, or refreshments are given to a man, no matter by whom, for the purpose of affecting his vote, the effect is to annihilate the man's vote, because he gives his vote upon an influence which the law says deprives him of free action; he becomes a man incompetent to give a vote, because he has not that freedom of will and of mind which the law contemplates he ought to have for the purpose of voting. That . . . has the effect of extinguishing the vote, and if there was a scrutiny for the purpose of ascertaining who has the majority of lawful votes, that man's vote ought to be struck off the poll." <sup>14</sup>

In *Stepney Division* <sup>15</sup> a vote was struck off on the ground that the children of the voter had been employed and paid as messengers by the respondent. It was proved that the father did not hand the money over to the children as their earnings; although, on the other hand, the money was not paid to the voter until after the election, and as a matter of fact he had not expected to be paid anything for his children's services.

In the same case <sup>16</sup> votes were allowed to stand, notwithstanding that the voter in one instance was paid the sum of 5s. for the loss of a hat at a public meeting and the return of election expenses showed the payment in specific terms, and in another, payment was made to a voter for repairs done by him to the roof of a house which had been damaged by reason of ropes having been attached to it for the purpose of suspending a banner across the street.

The Court will also strike off (1) the votes of persons whose votes are void through mistakes or irregularities at the poll, and (2) votes lost or thrown away.

An instance under the first of these heads was where the same voter was entered on the register under two different names, and voted in respect of each entry: one vote was struck off. <sup>17</sup> On the other hand, where a mistake occurred in the description of the locality where a voter's house was situate, the vote was held to be good; the material question being not whether the description was strictly accurate or not, but whether the man was the voter intended to be on the register. <sup>18</sup>

Votes may be lost by the ballot paper coming within any of the objections set out in rule 36 of the Ballot Act, 1872 (see p. 34, *supra*, and p. 292, *infra*), or by the vote being given at the wrong polling station. <sup>19</sup>

A vote will also be considered as lost or thrown away when it is given for a disqualified candidate (1) after a sufficient notice of the disqualification <sup>20</sup>; or (2) knowing that the candidate is disqualified <sup>21</sup>; or

<sup>12</sup> *Per* Lord Coleridge, C.J., in *Stowe v. Jolliffe*, *supra*; see the judgment of Darling, J., in *Pembroke Boroughs* (1901), 5 O. & H. 141.

<sup>13</sup> *Per* Channell, J., in *Pembroke Boroughs* (1901), 5 O. & H. 144.

<sup>14</sup> *Per* Martin, B., in *Bradford* (1869), 1 O. & H. 40; see also *Oldham* (1869), 1 O. & H. 161.

<sup>15</sup> (1886), 4 O. & H. 38.

<sup>16</sup> *Ibid.* 39.

<sup>17</sup> *Oldham* (1869), 1 O. & H. 153.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* 163.

<sup>20</sup> *R. v. Hawkins* (1813), 2 Dow, 124; *Claridge v. Evelyn* (1821), 5 B. & Ald. 81.

<sup>21</sup> *Clitheroe* (1853), 2 P. R. & D. 276; *per* Lord Mansfield in *R. v. Brissell* (1679), Heywood, County El. 537.



(3) knowing the facts by reason of which the candidate is disqualified<sup>22</sup>; or (4) when the fact of the disqualification or the facts by which it is caused are notorious.<sup>21</sup>

The effect of this would be that the candidate next on the poll, though with a minority of actual votes, may be declared elected, provided that, after deducting the number of votes actually given, after such notice or knowledge, for the disqualified candidate, the latter would be found to be in a minority. This would be a very different result from that of a respondent being unseated on the ground that he was disqualified, where no sufficient notice or knowledge of the disqualification was proved; as in this latter case, though the respondent would be unseated, yet the petitioner would not in consequence thereof be entitled to the seat merely as being the next qualified candidate on the poll: he must show that he had an actual majority of legal and valid votes in order to obtain the seat.<sup>23</sup>

In order, therefore, to avoid the necessity of a second election, it is of the utmost importance to the other candidates that a sufficient notice should be given of the disqualification of the candidate in question. The notice should state distinctly and positively—

(1) The fact on which the disqualification is founded:

(2) That the candidate was by reason of such fact legally disqualified. This part of the notice should refer to the statute, resolution or decision by which the disqualification was imposed or established:

(3) That all votes given for such candidate after such notice would be thrown away, and treated as if they had not been given.

In *Drinkwater v. Deakin*<sup>24</sup> the sufficiency of the notice was objected to on the ground that it did not state positively that the candidate was by law disqualified, but only that the person giving it (the agent of the other candidate) *believed* him to be disqualified. It was, however, held that the notice was sufficient, and stated that when a voter has such knowledge of existing facts, or such notice of existing facts is given to him as would convince a person of ordinary care and intelligence that such facts existed, and they are such as, if he knew what legally constituted incapacity, would convince him, as a person of ordinary care and intelligence, that such incapacity existed, then, if he votes for the candidate who is in fact disqualified, he throws away his vote.

If possible, the notice should be personally served on every voter and advertised in the newspapers; if that be impossible, the notice should be affixed to some conspicuous place near the polling place, if the disqualification is discovered on the nomination day.<sup>25</sup>

The notice should proceed from, and be signed by, some responsible person, *e.g.*, the election agent of the opposing candidate. For form of notice of disqualification, see Form 8 in Appendix V., p. 389, *infra*.

The notoriety which will be equivalent to notice would appear to be a knowledge of the fact of the disqualification, or of the report of such fact, on the part of the great majority of the electors, obtained through the ordinary channels of intelligence and receiving general acquiescence.

In *Drinkwater v. Deakin*<sup>26</sup> it was held that bribery at an election does not incapacitate a candidate in the sense of causing votes given for him at the election after notice of the act of bribery to be thrown away; that such incapacity would not attach until he was found guilty by some competent tribunal, and that the incapacity which would (after due notice given) cause votes given for a candidate to be thrown away is confined to cases such as those of an infant, a woman, an alien under the old law, a convicted felon, &c.: in all of which, as was pointed out by Brett, J., in the above case,<sup>27</sup> "something is wanting in the candidate himself which

<sup>22</sup> *Beresford v. Hope* v. *Sandhurst* (1889), 23 Q. B. D. 79.

<sup>23</sup> *R. v. Bridge* (1813), 1 M. & S. 76.

<sup>24</sup> *Launceston* (1874), L. R. 9 C. P.

<sup>25</sup> *Galway County* (1872), 2 O. & H.

46: *Trench v. Nolan*, 6 Ir. R. C. L. 464; *Deakin v. Drinkwater* (1874), L. R. 9 C. P. 626; *Tipperary* (1875), 3 O. & H. 41; 9 Ir. R. C. L. 217.

<sup>26</sup> (1876), L. R. 9 C. P. 626.

<sup>27</sup> *Ibid.* 635.



cannot be supplied, the existence or non-existence of which is not dependent on argument or decision, but which the law insists shall exist in everyone who puts himself forward as a candidate.”

Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence, in respect of any person who voted at such election, or where any person retained or employed for reward by or on behalf of such candidate for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment, is proved on such trial to have voted at such election, there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to such candidate one vote for every person who voted at such election and is proved to have been so bribed, treated, or unduly influenced, or so retained or employed for reward as aforesaid.<sup>28</sup>

The construction of this section was discussed in *Malcolm v. Parry*,<sup>29</sup> where, after the respondent had been unseated for the corrupt distribution of coal tickets by his agent, the petitioner in order to obtain the seat claimed on a scrutiny to strike off one vote from the respondent's poll for each voter who had received such a ticket, whether the voter had acted corruptly in receiving them or not, and without inquiring for whom he voted. It became, however, unnecessary to decide the question as to the necessity of a corrupt intention on the part of the voter, as the majority of the Court was of opinion that the circumstances of the case raised a *prima facie* case of the existence of such corruption, in the absence of any evidence on the part of the voters that the gift was not received corruptly, and had not influenced their minds; and one vote was struck off in respect of each such voter without looking for whom he had in fact voted. Two of the judges, Lord Coleridge, C.J., and Brett, J., said, however, that proof that the voter had acted corruptly was necessary before a vote could be struck off under the section.

Where a scrutiny is claimed and there is a recriminatory case, it is usual to take the scrutiny first.<sup>30</sup> The recriminatory case can be withdrawn at the trial.<sup>1</sup>

*Recriminatory case.*—Recriminatory evidence can be given by the respondent when the petitioner claims the seat, but not otherwise.<sup>2</sup>

On the trial of a petition under this Act complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election.<sup>3</sup>

If the petitioner fails to prove that the respondent has been guilty of corrupt practices, and the respondent then establishes his recriminatory case, “the petitioner still has the right to go into the scrutiny for the purpose of unseating the respondent, because if he succeeded in showing that the respondent had not a majority of legal votes, although in consequence of the success in the recriminatory case the defeated candidate would not be seated, still the voters would be entitled to a new election.”<sup>4</sup>

The petitioner is not obliged to be called as a witness when there is a recriminatory charge, but if there is any ground for suspicion the judge may call him under sect. 32 of the Parliamentary Elections Act, 1868.<sup>5</sup>

No one but the respondent is allowed to be called to exonerate himself after the inquiry has closed.<sup>6</sup>

*Power of Court to order attendance of witness.*—The Court has power to order the attendance of any person as a witness who appears to it to

<sup>28</sup> Ballot Act, 1872, s. 25.

<sup>29</sup> *Boston* (1874), L. R. 9 C. P. 610.

<sup>30</sup> *Stepney Division* (1886), 4 O. & H.

35.

<sup>1</sup> *Shoreditch* (1896), 5 O. & H. 88.

<sup>2</sup> *Thirsk* (1880), 3 O. & H. 113.

<sup>3</sup> Parliamentary Elections Act, 1868,

s. 53.

<sup>4</sup> *Per Willes, J.*, in *Southampton* (1869), 1 O. & H. 225, 226; see also *Waterford* (1870), 2 O. & H. 2.

<sup>5</sup> *Westbury* (1869), 1 O. & H. 48.

<sup>6</sup> *Knaresborough* (1880), 3 O. & H. at p. 143.

have been concerned in the election to which the petition refers, and any person refusing to obey such order is guilty of contempt of Court. The Court may examine any witness so compelled to attend, or any person in court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Court, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.<sup>7</sup>

Such order will be made, if it be proved that every effort has been made to serve the witness with a subpoena but without effect,<sup>8</sup> or that he has been called on his subpoena and has not answered,<sup>9</sup> or he is intentionally keeping out of the way.<sup>10</sup> If necessary the Court will adjourn in order that a witness may be compelled to attend.<sup>11</sup>

When a witness is out of the jurisdiction, the Court will, if necessary, as was done in *Cashel*,<sup>12</sup> issue a *subpoena ad testificandum* to secure his attendance.<sup>13</sup>

*Prohibition of disclosure of vote.*—"Until a vote is declared invalid an election court is prohibited by rule 41 in the schedule of the Ballot Act from discovering for whom such vote has been given."<sup>14</sup>

No person who has voted at an election can, in any legal proceeding to question the election or return, be required to state for whom he has voted.<sup>15</sup>

And even though the person who is called as a witness has not voted, he may not, unless he has openly stated that he belongs to a particular party, be asked to what party he belongs.<sup>16</sup>

No witness is liable to be asked, or bound to answer, any question for the purpose of proving the commission of any corrupt practice at or in relation to any election prior to the passing of the Corrupt and Illegal Practices Prevention Act, 1883.<sup>17</sup>

in *Norwich*<sup>18</sup> a witness was asked in cross-examination, "Are you the man who was reported for corruptly treating voters by the election commissioners"; and counsel objected, on the ground that such a question was prohibited by this section. Denman, J., said: "I do not think the section means to prevent the asking of such a question as this, viz., whether he is the same person."

*Obligation of witness to answer and certificate of indemnity.*—By the Corrupt Practices Act, 1883, s. 59 (1), a witness is not now excused from answering any question relating to any offence at or connected with the election, on the ground that the answer thereto may criminate or tend to criminate himself, nor on the ground of privilege; but

(1) A witness who answers truly all questions which he is required by the election court to answer is entitled to receive a certificate of indemnity under the hand of a member of the Court stating that such witness has so answered; and

(2) An answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him.

Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts committed by him previously to the date of the certificate at or in relation to the said election, the Court having cognisance of the case shall on

<sup>7</sup> Parliamentary Elections Act, 1868, s. 32; and Election Petition Rules, r. 41.

<sup>8</sup> *Waterford* (1870), 2 O. & H. 3.

<sup>9</sup> *Norwich* (1869), 1 O. & H. 9; *Galway* (1872), 2 O. & H. 50.

<sup>10</sup> *Longford* (1870), 2 O. & H. 12; *Taunton* (1874), 2 O. & H. 70.

<sup>11</sup> *Stroud* (1874), 2 O. & H. 108.

<sup>12</sup> (1869), 1 O. & H. 287.

<sup>13</sup> 17 & 18 Vict. c. 34, ss. 1, 2.

<sup>14</sup> *Per Denman, J., in Stepney* (1886), 4 O. & H. 36.

<sup>15</sup> *Ballot Act*, 1872, s. 12.

<sup>16</sup> *Per Grove, J., in North Durham* (1874), 3 O. & H. 2; *Lush, J., in Harwich* (1880), *ibid.* 64.

<sup>17</sup> Corrupt Practices Act, 1883, s. 49.

<sup>18</sup> (1886), 4 O. & H. 90.



proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.<sup>19</sup>

A person receiving a certificate of indemnity is not, however, relieved from any incapacity under the Act nor from any proceeding to enforce such incapacity, other than a criminal prosecution.<sup>20</sup>

*Evidence of corrupt practices, how received.*—Unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.<sup>21</sup>

Thus, in *Guildford*,<sup>22</sup> where the respondent was alleged to have committed a corrupt practice by one H., his alleged agent, and it was objected that no evidence of the corrupt practice could be given until it was proved that he was the respondent's agent. Willes, J., said: "The objection is, in effect, that no proof of H.'s agency has yet been given; but the Act removes that objection, for it says that proof of corrupt practice may be given before proof of agency, unless the judge in his discretion should change the order, or, rather, should direct counsel to change the order of proceeding."

On the other hand, in *Bristol*,<sup>23</sup> where collective acts of bribery were alleged against one person, Bramwell, B., in the exercise of his discretion, required the petitioner, before going into the alleged acts, to give proof of that person's agency, and said: "Although the statute says that you may, unless the judge otherwise orders, prove bribery before agency, it is desirable that the proof should not be given, unless there is a reasonable expectation of proving the agency afterwards."

*Questioning witnesses who are waiting to be examined, or getting them to sign a written statement, a reprehensible practice.*—"During the course of a trial the plan of getting witnesses waiting to be examined, poor ignorant men who do not know whom to please or to displease into a room alone with a solicitor and examining them is extremely reprehensible. Even before the trial, dealing with witnesses of the other side—I do not say it never should be done, but it should be done with great caution, and it would certainly be advisable not to do it in solitude. It is, as I have said, exceedingly reprehensible, and a thing which does not tend to the furtherance of justice, and which does a great deal of harm in every way. . . . There is another matter which is incidental, upon which, I think, it is important to express my opinion, and that is the question of getting witnesses who have been subpoenaed, or are likely to be subpoenaed, by the other side, to make statements, and in some cases getting them to sign already prepared statements. This is not the first time that it has been done . . . but it has never been successfully done, and it is, I believe, useless to the parties."<sup>24</sup>

"It is a most improper proceeding to take a statement from a man who has already made one to the other side. The object, no doubt, is to make the man's evidence of no value, and no doubt it would do so in an ordinary case. It does not have that effect in these cases, but it is a most improper and a most dangerous thing to do, and it has been condemned again and again by judges who have tried election petitions."<sup>25</sup>

*Duties and rights of Public Prosecutor.*—On every trial of a petition, the Director of Public Prosecutions must by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it is his duty to obey any directions given to him by the election court with respect to the summoning and examination of any witness to

<sup>19</sup> Corrupt Practices Act, 1883, s. 59 (2).

<sup>20</sup> *Ibid.* s. 59 (3).

<sup>21</sup> Parliamentary Elections Act, 1868, s. 17.

<sup>22</sup> (1869), 1 O. & H. p. 14.

<sup>23</sup> (1870), 2 O. & H. 29.

<sup>24</sup> *Per* Grove, J., in *Wigan* (1881), 4 O. & H. 5.

<sup>25</sup> *Per* Lawrance, J., in *Worcester* (1906), 5 O. & H. 214.



give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.<sup>26</sup>

It is also his duty, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the Court to examine such person as a witness.<sup>27</sup>

Further, it is his duty, without any direction from the election court, if it appears to him that any person who has not received a certificate of indemnity has been guilty of a corrupt or illegal practice, to prosecute such person for the offence before the said Court, or if he thinks it expedient in the interests of justice before any other competent Court.<sup>28</sup>

"The only duty of a Public Prosecutor at the trial of an election petition," said Wills, J., in *Montgomery*,<sup>29</sup> "is to attend the court and wait until the Court invites his intervention. I do not think that it was ever intended to give him a separate *locus standi*. There may be cases where witnesses are allowed to leave the box without being cross-examined, and where the Court may think that in the public interest they ought to be cross-examined. In such a case they would call for the intervention of the Public Prosecutor."

In the same case Pollock, B., said<sup>30</sup>: "I do not think that counsel for the Public Prosecutor ought to be instructed by or to receive information from either side. He may, of course, make any suggestions that he may think fit to the Court, but it is certainly more convenient that the issue between the parties should be tried out."

"We have looked at the Act," said Denman, J., in *Stepney Division*,<sup>1</sup> "and we do not find it anywhere laid down that the Public Prosecutor has any right to cross-examine witnesses who are called here. Under certain circumstances he has the right to summon a witness, but as to the examination of a witness he is bound to obey the directions of the Court. It would be extremely inconvenient and unfair to the parties, by prolonging the inquiry, if the Public Prosecutor were allowed to interfere on his own mere motion with every witness. We shall expect to have no application for leave to examine a witness made to us by the Public Prosecutor unless it is founded upon something substantial."

*Costs of Public Prosecutor.*—"It is by no means a matter of course that the costs of the attendance of the counsel who represents the Public Prosecutor should be paid by either party."<sup>2</sup>

*Prosecution before election court for corrupt or illegal practice.*—Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the Court, the Court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is rendered subject to under the Corrupt Practices Act, 1883, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding £200, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence;

Provided that, in the case of a corrupt practice, the Court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.<sup>3</sup>

<sup>26</sup> Corrupt Practices Act, 1883, s. 43

(1).

<sup>27</sup> *Ibid.* s. 43 (2).

<sup>28</sup> *Ibid.* s. 43 (3).

<sup>29</sup> (1892), 4 O. & H. 168.

<sup>30</sup> *Ibid.*

<sup>1</sup> (1886), 4 O. & H. 37.

<sup>2</sup> *Per* Pollock, B., in *Worcester* (1892), Day's Election Cases, at p. 89.

<sup>3</sup> Corrupt Practices Act, 1883, s. 43 (4).

Where a person is so prosecuted for any such offence, and either elects to be tried by a jury or does not appear before the Court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment, or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.<sup>4</sup>

Upon such order being made—

(a) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(b) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(c) if the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted, shall order him to be brought before that court.<sup>5</sup>

*Election court a judicial, not an inquisitorial, tribunal.*—"It must," however, "be borne in mind in these cases that although the object of the statute by which these election tribunals were created was to prevent corrupt practices, still the tribunal is a judicial, and not an inquisitorial, one: it is a court to hear and determine according to law, and not a commission armed with powers to inquire into and suppress corruption."<sup>6</sup>

In *Windsor*<sup>7</sup> Willes, J., said: "I consider my duties to be judicial, and not inquisitorial, except in so far as it would be proper that I should follow up any clue which the evidence laid before me by the one side or the other may furnish. . . . It is only where a clue to the existence of . . . corrupt practices is presented by the evidence properly and formally laid before me that I shall think it necessary . . . to send for parties and papers with a view to investigate a subject which I consider to be out of my jurisdiction."

In *Stroud*<sup>8</sup> Bramwell, B., said he agreed with these observations.

In *Evesham*<sup>9</sup> the Court intimated that if in the course of the trial of a petition something is brought to their attention which shows that there has been corruption in the borough, it would be their duty to report that corruption to the House.

"Under sect. 43 of the Corrupt and Illegal Practices Prevention Act, 1883, the Public Prosecutor has power, with the leave of the court, to call additional witnesses, and therefore the court has power to call witnesses to clear up any matters which may have cropped up in the course of the case. It is a very proper course to take."<sup>10</sup>

<sup>4</sup> Corrupt Practices Act, 1883 s. 43 (5).

<sup>5</sup> *Ibid.* s. 43 (6).

<sup>6</sup> *Per* Grove, J., in *Taunton* (1874), 2 O. & H. p. 74.

<sup>7</sup> (1869), 1 O. & H. 7.

<sup>8</sup> (1874), 2 O. & H. 109.

<sup>9</sup> (1880), 3 O. & H. at pp. 95, 96.

<sup>10</sup> *Per* Pollock, B., in *Montgomery* (1892), 4 O. & H. 169, 170; see also *Hexham* (1892), 4 O. & H. 143.



*Special case.*—Where, upon the application of any party to a petition made in the prescribed manner to the court, it appears to the court that the case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly,<sup>11</sup> and any such special case shall, as far as may be, be heard before the court, and the decision of the court shall be final; and the court shall certify to the Speaker its determination in reference to such special case.<sup>12</sup>

In *New Sarum*<sup>13</sup> Willes, J., granted a special case, but directed that when drawn up it should be submitted to him so that he should take care of the interests of the constituents.

In *North Lonsdale* (1910), *Times*, April 23, where the petitioner claimed the right to have been returned, a recount was ordered, and upon it being found that the majority was increased the case raised by the petition was ordered to be stated as a special case.

*Certificate and report of court.*—At the conclusion of the trial the Court determines whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and forthwith certifies in writing such determination to the Speaker, and upon such certificate being given such determination shall be final to all intents and purposes.<sup>14</sup>

Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition relates, the Court, in addition to such certificate, and at the time time, reports in writing to the Speaker as follows:—

(1) Whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt or illegal practice<sup>15</sup>;

(2) The names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice<sup>15</sup>; and whether those persons have or have not been furnished with certificates of indemnity<sup>16</sup>;

(3) Whether corrupt or illegal practices have, or whether there is reason to believe that corrupt or illegal practices have, extensively prevailed at the election to which the petition relates<sup>15</sup>;

(4) Whether any candidate has been guilty by his agents of any corrupt or illegal practice.<sup>17</sup>

The Court may at the same time make a special report to the Speaker as to any matters arising in the course of the trial an account of which in their judgment ought to be submitted to the House of Commons<sup>18</sup>:

Every certificate and every report sent to the Speaker as aforesaid shall be under the hands of both judges, and if the judges differ as to whether the member whose return or election is complained of was duly returned or elected, they shall certify that difference, and the member shall be deemed to be duly elected or returned; and if the judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void; and if the judges differ as to the subject of a report to the Speaker, they shall certify that difference, and make no report on the subject on which they so differ.<sup>19</sup>

A certificate is final and conclusive, but a report is not; and therefore

<sup>11</sup> For precedents of special case, see p. 415, *infra*.

<sup>12</sup> Parliamentary Elections Act, 1868, s. 11 (16).

<sup>13</sup> (1869), 19 L. T. N. S. 523.

<sup>14</sup> Parliamentary Elections Act, 1868, s. 11 (13); 42 & 43 Vict. c. 75, s. 2.

<sup>15</sup> Parliamentary Elections Act, 1868,

s. 11 (14); Corrupt Practices Act, 1879, s. 2; Corrupt Practices Act, 1883, s. 11.

<sup>16</sup> Corrupt Practices Act, 1883, s. 60.

<sup>17</sup> *Ibid.* ss. 5, 11.

<sup>18</sup> Parliamentary Elections Act, 1868,

s. 11 (15); 42 & 43 Vict. c. 75, s. 2.

<sup>19</sup> 42 & 43 Vict. c. 75, s. 2.



a report will not prevent an inquiry into the same facts on another petition.<sup>20</sup>

Where a candidate who has been defeated presents a petition claiming the seat and is declared duly elected, the certificate of the election court is final, and he cannot subsequently be petitioned against.<sup>21</sup>

But although the certificate of the election court is final as to the particular petition before the court, and also final as to what could with due diligence have been brought under the petition, the certificate is no bar to another petition being presented within twenty-eight days after a new act of corruption had been disclosed. But the new act of corruption must be an act done by the member or with his privity.<sup>22</sup>

"The agent that I should consider would affect the seat by his act after the election would be a person who did that act with the privity of the member. A person who merely was an agent in the sense that he had been an agent in the election would not, in my judgment, affect the seat by any corrupt act of his done after the election without the privity of the member."<sup>23</sup>

"There is a clause in the Parliamentary Elections Act, 1868, under which, if the respondent or one of his agents pay in respect of the election one shilling of money at any time between this present hour and the last hour of the session of this present Parliament, not only in this year, not only in the next year, but up to the last hour when it may be finally dissolved at the approach of a new election, for twenty-eight days after every individual payment a new petition can be presented, not even to Parliament, but to the Court of Common Pleas, and if that individual payment be proved, the seat of the sitting member is just as effectually gone as it would be on this inquiry. There are two parties to every pecuniary transaction—there is the donor and there is the donee; and though I am perfectly satisfied that neither of the candidates intends making any such payment, let me tell the one and the other, that if he is pressed by persons who wish to carry on a system of corruption, he is bound by no feeling of honour to contribute to their rapacity; and let me tell him also, that if he at any time pays one shilling in consideration of this last election, he can be again petitioned against. If a farthing is paid in consideration of a vote at the last election to anyone here, during the existence of the Parliament now sitting, a new petition can be presented, and the whole thing can be again made the subject of investigation."<sup>24</sup>

Where the Court under the Parliamentary Elections Act, 1868, s. 15, reports that corrupt practices have extensively prevailed in any constituency at the election to which the petition relates, both Houses by a joint address may pray His Majesty for an inquiry by means of a commission under the 15 & 16 Vict. c. 57. A joint address by both Houses to the same effect may also be presented under the circumstances stated in the Parliamentary Elections Act, 1868, s. 56:—

"If upon a petition to the House of Commons, presented within twenty-one days after the return to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, of a member to serve in Parliament for any borough or county, or within fourteen days after the meeting of Parliament, and signed by any two or more electors of such borough or county, and alleging that corrupt practices have there so prevailed, an address be presented by both Houses

<sup>20</sup> *Stevens v. Tillett* (1870), L. R. 6 C. P. 174.

<sup>21</sup> *Waygood v. James* (1869), L. R. 4 C. P. 361.

<sup>22</sup> See the evidence of Willes, J., before the Select Committee on Parliamentary and Municipal Elections,

p. 447.

<sup>23</sup> *Per* Martin, B., in *Salford* (1869), 1 O. & H. 139.

<sup>24</sup> *Per* Keogh, J., in *Galway (Borough)* (1869), Judgments, 341; 1 O. & H. 305.

of Parliament, praying that such allegation may be inquired into, the Crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the statute of the 15 & 16 Vict. c. 57."

The Commissioners, when appointed, can also inquire into and report as to the existence of illegal practices.<sup>25</sup>

*Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.*—Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court, and before any person is reported by election commissioners, to have been guilty, at an election, of any corrupt or illegal practice, the court or commissioners, as the case may be, shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.<sup>26</sup>

<sup>25</sup> Corrupt Practices Act, 1883, s. 12.

<sup>26</sup> Notwithstanding the words "by himself" and *R. v. Mansell Jones* (1889) 23 Q. B. D. 29, the Courts have

allowed such persons to be represented by counsel. See *Hexham* (1892), Day E. C. 78; *Rochester* (1892), *ibid.*; *Worcester* (1906), 5 O. & H. 214.





## APPENDIX II.

### STATUTES.

7 & 8 WILL. 3, c. 7.

An Act to prevent False and Double Returns of Members to serve in Parliament.

*False return prohibited—Returns contrary to the last determination of the commons adjudged false.*

WHEREAS false and double returns of members to serve in Parliament are an abuse of trust in a matter of the greatest consequence to the kingdome and not only an injury to the persons duely chosen by keeping them from their service in the House of Commons and putting them to great expence to make their elections appeare but also to the counties cities boroughs and cinque-ports by which they are chosen and the businesse of Parliament disturbed and delayed thereby Be it therefore enacted and declared . . . that all false returns wilfully made of any . . . member to serve in Parliament are against law and are hereby prohibited And in case that any person or persons shall returne any member to serve in Parliament for any county city borough cinque-port or place contrary to the last determination in the House of Comons of the right of election in such county city borough cinque-port or place that such returne soe made shall and is hereby adjudged to be a false returne.

*Party grieved to recover double damages and full costs.*

2. And . . . the party grieved (to witt) every person that shall bee duely elected to serve in Parliament for any county city borough cinque-port or place by such false returne may sue the officers and persons making or procuring the same and every or any of them att his election in any [of <sup>1</sup>] his Majesties courts of record att Westminster and shall recover double the damages hee shall sustaine by reason thereof together with his full costs of such suit.

*Officer making false returns; remedy.*

3. And to the end the law may not bee eluded by double returns . . . if any officer shall wilfully falsely and maliciously returne more persons than are required to bee chosen by the writt or precept on which any choice is made the like remedy may bee had against him or them and the party or parties that willingly procure the same and every or any of them by the party grieved att his election.

*Securities to procure return void.—Giving such security; penalty £300.*

4. And . . . all contracts promises bonds and securities whatsoever hereafter made or given to procure any returne of any member to serve in Parliament or any thing relating thereunto bee adjudged void and whoever makes or gives such security contract promise or bond or any guift or reward to procure such false or double returne shall forfeit the sum of three

<sup>1</sup> Interlined on the roll.

hundred pounds one third part thereof to bee to his Majestie his heires and successors another third part thereof to the poor of the county city borough or place concerned and one third part thereof to the informer with his costs to bee recovered in any of his Majesties courts of record att Westminster by action of debt bill plaint or information wherein noe essoigne protection or wager of law shall bee allowed nor any more then one imparlance.

*Clerk of the Crown to enter single and double returns of members, and alterations made therein in a book.—All persons may have free access thereto.—Fee.—Book or true copy thereof evidence.—Clerk of the Crown not making entry, or altering or unduly giving certificate or neglecting duty; penalty £500, and loss of office and incapacity.*

5. And for the more easie and better proof of any such false or double returne . . . the clerk of the crowne for the time being shall from time to time enter or cause to bee entred in a book for that purpose to bee kept in his office every single and double returne of any member or members to serve in Parliament which shall bee returned or come into his office or to his hands and alsoe every alteration and amendment as shall bee made by him or his deputy in every such returne to which book all persons shall have free accesse at all seasonable times to search and take true copies of soe much thereof as shall bee desired paying a reasonable fee or reward for the same; and the partie or parties prosecuting such suit shall and may att any tryal give in evidence such book soe kept or a true copy thereof relateing to such false or double returne and shall have the like advantage of such proof as hee or they should or might have had by producing the record it selfe any law custome or usage to the contrary notwithstanding. And in case the said clerke of the crowne shall not within six days after any returne shall come into his office or to his hands duely and fairely make such entry or entries as aforesaid or shall make any alteration in any returne unlesse by order of the House of Commons or give any certificate of any person not returned or shall wilfully neglect or omitt to performe his duty in the premisses hee shall for every such offence forfeit to the party and parties aggrieved the sum of five hundred pounds to bee recovered as aforesaid and shall alsoe forfeit and lose his said office and bee for ever incapable of having or holding the same.

#### *Limitation of Action.*

6. Provided always that every information or action grounded upon this Statute shall bee brought within the space of two yeares after the cause of action shall arise and not after.

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#### 7 & 8 WILL. 3, c. 25.

An Act for the further regulating Elections of Members to serve in Parliament and for the preventing irregular Proceedings of Sheriffs and other Officers in the electing and returning such Members.

*Recital that electors have been injured in their rights of election by the practices of sheriffs and others.—Forty days to be between the teste and return of writ of summons.—Writs to be issued with expedition; and to be delivered to the proper officer.*

WHEREAS by the evill practices and irregular proceedings of sheriffs under-sheriffs mayors bayliffs and other officers in the execution of writts and precepts for electing of members to serve in Parliament as well the free-holders and others in their right of election as alsoe the persons by them elected to bee their representatives have heretofore beene greatly injured and abused Now for remedying the same and preventing the like for the

future bee itt enacted . . . that when any new Parliament shall att any time hereafter bee summoned or called there shall bee forty dayes betweene the teste and returnes of the writts of summons. And that the lord chancellor lord keeper or lords commissioners of the great seale for the tyme being shall issue out the writts for election of members to serve in the same Parliament with as much expedition as the same may be done And that as well upon the calling or summoning any new Parliament as also in case of any vacancy dureing this present or any future Parliament the severall writts shall bee delivered to the proper officer to whome the execution thereof doth belong or appertaine and to noe other person whatsoever and that every such officer upon the receipt of the same writt shall upon the back thereof indorse the day hee received the same. . . .

*Sheriff, &c., not to take fee for making out, delivering, &c., of writ or precept.*

2. And be it further enacted by the authority aforesaid that neither the sheriffe or his under sheriffe in any county or city nor the mayor bayliffe constable port-reeve or other officer or officers of any borough towne corporate port or place to whom the execucon of any writt or precept for electing members to serve in Parliament doth belong or appertaine shall give pay receive or take any fee reward or gratuity whatsoever for the making out receipt delivery returne or execution of any such writt or precept.

*Sheriff, &c., offending; penalty £500.*

5. . . . And every sheriffe under-sheriffe mayor bayliffe and other officer to whom the execution of any writt or precept for electing of members to serve in Parliament doth belong for every wilfull offence contrary to this Act shall forfeit to every party soe aggrieved the summe of five hundred pounds to bee recovered by him or them his or theire executors or administrators together with full costs of suite and for which hee or they may sue by action of debt bill plaint or informacon in any of his Majesties courts att Westminster. . . .

*Infants not to vote or be elected.—Penalty.*

7. And . . . that noe person whatsoever being under the age of one and twenty yeares shall att any tyme hereafter bee admitted to give his voice for election of any member or members to serve in this present or any future Parliament and that noe person hereafter shall bee capable of being elected a member to serve in this or any future Parliament who is not of the age of one and twenty yeares and every election or returne of any person under that age is hereby declared to bee null and void. And if any such minor hereafter chosen shall presume to sitt or vote in Parliament hee shall incur such penalties and forfeitures as if hee had presumed to sitt and vote in Parliament without being chosen or returned.<sup>2</sup>

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#### 12 & 13 WILL. 3, C. 2.

An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject.

*Further provisions for securing the religion, laws, and liberties of these realms.*

That . . . no person born out of the kingdoms of England Scotland or Ireland or the dominions thereunto belonging (although he be naturalized or made a denizen (except such as are born of English parents) shall be capable to be . . . a member of either House of Parliament . . .<sup>3</sup>

<sup>2</sup> See pp. 1, 47, *supra*.

<sup>3</sup> See pp. 1, 5, *supra*.



## 6 ANNE, c. 41.

An Act for the security of Her Majesties Person and Government and of the Succession to the Crown of Great Britain in the Protestant Line.

*Certain new officers and others herein named not to sit in Parliament.*

24. And . . . no person who shall have in his own name or in the name of any person or persons in trust for him or for his benefit any new office or place of profit whatsoever under the crown which at any time since the five and twentieth day of October in the year of our Lord one thousand seven hundred and five has been created or erected or hereafter shall be created or erected nor any person who shall be commissioner or sub-commissioner of prizes secretary or receiver of the prizes nor any comptroller of the accompts of the army nor any commissioner of transports nor any commissioner of the sick and wounded nor any agent for any regiment nor any commissioner for any wine licences nor any governor or deputy governor of any of the plantations nor any commissioners of the navy employed in any of the out ports nor any person having any pension from the crown during pleasure shall be capable of being elected or of sitting or voting as a member of the House of Commons in any Parliament which shall be hereafter summoned and holden.<sup>4</sup>

*Proviso as to member accepting office of profit.*

25. Provided always that if any person being chosen a member of the House of Commons shall accept of any office of profit from the crown during such time as he shall continue a member his election shall be and is hereby declared to be void and a new writ shall issue for a new election as if such person so accepting was naturally dead provided nevertheless that such person shall be capable of being again elected as if his place had not become void as aforesaid.<sup>5</sup>

*Proviso for officers in the army or navy sitting.*

27. Provided also that nothing herein contained shall extend or be construed to extend to any member of the House of Commons being an officer in her Majesties navy or army who shall receive any new or other commission in the navy or army respectively.<sup>6</sup>

*Disabled persons sitting in Parliament; penalty £500.*

23. And . . . if any person hereby disabled or declared to be incapable to sit or vote in any Parliament hereafter to be holden shall nevertheless be returned as a member to serve for any county stewardry city town or cinque port in any such Parliament such election and return are hereby enacted and declared to be void to all intents and purposes whatsoever And if any person disabled or declared incapable by this Act to be elected shall after the dissolution or determination of this present Parliament presume to sit or vote as a member of the House of Commons in any Parliament to be hereafter summoned such person so sitting or voting shall forfeit the sum of five hundred pounds to be recovered by such person as shall sue for the same in England by action of debt bill plaint or information wherein no essoign protection or wager of law shall be allowed and only one imparlance.

<sup>4</sup> See p. 2, *supra*.

<sup>5</sup> See pp. 3, 9, *supra*.

<sup>6</sup> See p. 4, *supra*.

## 1 GEO. 1. STAT. 2, c. 56.

An Act to disable any Person from being chose a Member of or from sitting and voting in the House of Commons, who has any Pension for any Number of Years from the Crown.

*No person having a pension from the crown, shall be capable of being elected, &c., a member of the House of Commons.*

WHEREAS by an Act intituled "An Act for the security of her Majesties person and government, and of the succession to the crown of Great Britain in the protestant line," and made in the sixth year of the late Queen Anne, it was provided that no person having any pension from the Crown during pleasure should be capable of being elected, or of sitting or voting as a member of the House of Commons, in any Parliament which should be then after summoned and holden: To the end, therefore, that the provision intended by that law, for securing the honour of the House of Commons, may not in future times be defeated or eluded by any person who shall be a member of the House of Commons accepting any pension for any term or number of years, be it enacted by the Kings most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that no person having any pension from the crown for any term or number of years, either in his own name or in the name or names of any other person or persons in trust for him or for his benefit, shall be capable of being elected or chosen a member of, or for sitting or voting as a member of this present or any future House of Commons which shall be hereafter summoned.<sup>7</sup>

*Any person having such pension, and who being elected shall sit in the House, shall forfeit £20 per diem to the prosecutor.*

2. And be it further enacted by the authority aforesaid that if any person who shall have such pension aforesaid at the time of his being so elected, or at any time after, during such time as he shall continue or be a member of the House of Commons, shall presume to sit or vote in that House, then and in such case he shall forfeit twenty pounds for every day in which he shall sit or vote in the said House of Commons to such person or persons who shall sue for the same in any of his Majesties courts in Westminster-Hall; and the monies so forfeited shall be recovered by the person so suing, with full costs of suit, in any of the said courts, by action of debt, bill, plaint, or information. . . .

## 15 GEO. 2, c. 22.

An Act to exclude certain officers from being Members of the House of Commons.

*Preamble.—Description of officers not admitted to sit in Parliament.*

FOR further limiting or reducing the number of officers capable of sitting in the House of Commons, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the dissolution or other determination of this present Parliament, no person who shall be commissioner of the revenue in Ireland, or commissioner of the navy or victualling offices, nor any deputies or clerks in any of the said offices, or in any of the several offices following, that is to say, the office of lord high

<sup>7</sup> See p. 4. *supra*.

treasurer, or the commissioners of the Treasury, or of the auditor of the receipt of his Majesty's Exchequer, or of the tellers of the Exchequer, or of the chancellor of the Exchequer, or of the lord high admiral, or the commissioners of the admiralty, or of the paymasters of the army, or of the navy, or of his Majesty's principal secretaries of state, or of the commissioners of the salt, or of the commissioners of the stamps, or of the commissioners of appeals, or of the commissioners of wine licences, or of the commissioners of hackney coaches, or of the commissioners of hawkers and pedlars, nor any persons having any office, civil or military, within the island of Minorca, or in Gibraltar, other than officers having commissions in any regiment there only, shall be capable of being elected, or of sitting or voting as a member of the House of Commons, in any Parliament which shall be hereafter summoned and holden.<sup>8</sup>

*What returns of members are declared void.—Penalty on persons sitting or voting, after disabled by this Act.*

2. And . . . if any person hereby disabled or declared to be incapable to sit or vote in any Parliament hereafter to be holden, shall nevertheless be returned as a member to serve for any county, stewardry, city, borough, town, cinque port, or place in Parliament, such election and return are hereby enacted and declared to be void to all intents and purposes whatsoever; and if any person disabled and declared incapable by this Act to be elected shall, after the dissolution or other determination of this present Parliament, presume to sit or vote as a member of the House of Commons in any Parliament to be hereafter summoned, such person so sitting or voting shall forfeit the sum of twenty pounds for every day in which he shall sit or vote in the said House of Commons to such person or persons who shall sue for the same in any of his Majesty's courts at Westminster, and the money so forfeited shall be recovered by the persons so suing, with full costs of suit, in any of the said courts, by action of debt, bill, plaint, or information, . . . and shall from thenceforth be incapable of taking, holding, or enjoying any office of honour or profit under his Majesty, his heirs or successors.

*Proviso.*

3. Provided always, . . . that nothing in this Act shall extend or be construed to extend or relate to, or exclude the treasurer or comptroller of the navy, the secretaries of the Treasury, the secretary to the chancellor of the Exchequer, or secretaries of the admiralty, the under secretary to any of his Majesty's principal secretaries of state, or the deputy paymaster of the army, or to exclude any person having or holding any office or employment for life, or for so long as he shall behave himself well in his office, anything herein contained to the contrary notwithstanding.<sup>9</sup>

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22 GEO. 3, c. 45.

An Act for restraining any person concerned in any Contract, Commission or Agreement made for the Publick Service from being elected or sitting and voting as a Member of the House of Commons.

*Preamble.—After the end of this session, all persons holding contracts, &c., for the publick service shall be incapable of being elected or sitting in the House of Commons.*

FOR further securing the freedom and independence of Parliament, be it enacted . . . that from and after the end of this present session of Parliament any person who shall directly or indirectly himself or by any

<sup>8</sup> See p. 4, *supra*.

<sup>9</sup> See p. 2, *supra*.



person whatsoever in trust for him or for his use or benefit or on his account undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement or commission made or entered into with, under or from the commissioners of his Majesty's Treasury, or of the Navy or Victualling Office, or with the master general or board of Ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever, for or on account of the publick service, or shall knowingly and willingly furnish or provide in pursuance of any such agreement, contract or commission which he or they shall have made or entered into as aforesaid, any money to be remitted abroad or any wares or merchandize to be used or employed in the service of the publick, shall be incapable of being elected or of sitting or voting as a member of the House of Commons during the time that he shall execute, hold or enjoy any such contract, agreement or commission or any part or share thereof, or any benefit or emolument arising from the same.<sup>10</sup>

*If any member accepts or continues to hold any such contract, &c., after the commencement of the next session, his seat shall be void.*

2. And . . . if any person, being a member of the House of Commons, shall, directly or indirectly himself or by any other person whatsoever in trust for him or for his use or benefit or on his account enter into, accept of, agree for, undertake or execute, in the whole or in part, any such contract, agreement or commission as aforesaid, . . . the seat of every such person in the House of Commons shall be and is hereby declared to be void.

*Not to extend to incorporated trading companies.*

3. Provided always, . . . that nothing herein contained shall extend or be construed to extend to any contract, agreement or commission made, entered into or accepted by any incorporated trading company in its corporate capacity, nor to any company now existing or established and consisting of more than ten persons, where such contract, agreement or commission shall be made, entered into or accepted for the general benefit of such incorporation or company.

*Not to extend to contracts devolving by descent, &c., until after twelve months' possession.*

6. Provided also, . . . that nothing herein contained shall extend or be construed to extend to any person on whom after the passing of this Act the completion of any contract, agreement or commission shall devolve by descent or limitation, or by marriage, or as devisee, legatee, executor or administrator, until twelve calendar months after he shall have been in possession of the same.

*If any person hereby disqualified shall be elected, election shall be void.—Disabled persons who shall sit in the House of Commons after this session shall forfeit £500 for each day.*

9. And . . . if any person hereby disabled or declared to be incapable to sit or vote in Parliament shall nevertheless be returned as a member to serve for any county, stewartry, city, borough, town, cinque port or place in Parliament, such election and return are hereby enacted and declared to be void; and if any person disabled and declared incapable by this Act to be elected shall after the end of this present session of Parliament presume to sit or vote as a member of the House of Commons, such person so sitting or voting shall forfeit the sum of five hundred pounds for every day in which he shall sit or vote in the said house, to any person or persons who shall sue for the same in any of his Majesty's courts at Westminster,

<sup>10</sup> See p. 5, *supra*.

and the money so forfeited shall be recovered by the person or persons so suing with full costs of suit in any of the said courts, by any action of debt, bill, plaint or information, . . . and every person against whom any such penalty or forfeiture shall be recovered by virtue of this Act, shall be from thenceforth incapable of taking or holding any contract, agreement or commission for the publick service, or any share thereof or any benefit or emolument from the same in any manner whatsoever.

*A condition to be inserted in all publick contracts that no member of the House of Commons shall have any share thereof.—Penalty on contractors who shall admit any member of the House of Commons to any share of their contracts.*

10. And . . . in every such contract, agreement or commission to be made, entered into or accepted as aforesaid, there shall be inserted an express condition that no member of the House of Commons be admitted to any share or part of such contract, agreement or commission, or to any benefit to arise therefrom; and . . . in case any person or persons who hath or have entered into or accepted or who shall enter into or accept any such contract, agreement or commission shall admit any member or members of the House of Commons to any part or share thereof, or to receive any benefit thereby, all and every such person and persons shall for every such offence forfeit and pay the sum of five hundred pounds, to be recovered with full costs of suit in any of his Majesty's Courts of record at Westminster by any person or persons who shall sue for the same, by any action of debt, bill, plaint or information. . . .

#### *Limitation of actions.*

11. Provided also, . . . that no person shall be liable to any forfeiture or penalty inflicted by this Act unless a prosecution shall be commenced within twelve calendar months after such penalty or forfeiture shall be incurred.

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#### 24 GEO. 3, c. 26.

An Act to repeal so much of Two Acts made in the Tenth and Fifteenth Years of the Reign of his present Majesty as authorizes the Speaker of the House of Commons to issue his Warrant to the Clerk of the Crown for making out Writs for the election of Members to serve in Parliament in the manner therein mentioned, and for substituting other provisions for the like purposes.

*Speaker to issue his warrant during a recess for making out writs for electing members in the room of those who shall die or become peers of Great Britain.*

2. AND be it enacted, that from and after the passing of this Act it shall and may be lawful for the speaker of the House of Commons for the time being, during any recess of the said house, whether by prorogation or adjournment, and he is hereby required to issue his warrant to the clerk of the crown, to make out a new writ for electing a member of the House of Commons in the room of any member of the said house who shall happen to die, or who shall become a peer of Great Britain either during the said recess or previous thereto, as soon as he shall receive notice by a certificate, under the hands of two members of the House of Commons, of the death of such member in the first case, and in the second case that a writ of summons hath been issued under the great seal of Great Britain, to summon such peer to Parliament; which certificate may be in the form or to the effect comprized in the schedule hereunto annexed.



## SCHEDULE.

WE whose names are underwritten, being two members of the House of Commons, do hereby certify, that M.P., late a member of the said house, serving as one of the knights of the shire for the county of [or as the case may be] died upon the day of [or is become a peer of Great Britain, and that a writ of summons hath been issued under the great seal of Great Britain to summon him to Parliament] [as the case may be]; and we give you this notice to the intent that you may issue your warrant to the clerk of the crown to make out a new writ for the election of a knight to serve in Parliament for the said county of [or as the case may be] in the room of the said M.P. Given under our hands this day of .

To the speaker of  
the House of Commons.

*Note,* That in case there shall be no speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of this Act.

*Certificates of vacancies to be notified in the Gazette.*

3. Provided always . . . that the speaker of the House of Commons shall forthwith after his receiving such certificate cause notice thereof to be inserted in the London Gazette, and shall not issue his warrant until six <sup>11</sup> days after the insertion of such notice in the Gazette.

*Certain restrictions on the speaker relative to issuing his warrant.*

4. Provided also, that nothing herein contained shall extend to enable the speaker of the House of Commons to issue his warrant for the purposes aforesaid unless the return of the writ (by virtue of which such member deceased or become a peer of Great Britain was elected) shall have been brought into the office of the clerk of the crown fifteen days at the least before the end of the last sitting of the House of Commons immediately preceding the time when such application shall be made to the speaker of the House of Commons to issue such warrant as aforesaid; nor unless such application shall be made so long before the then next meeting of the House of Commons for the dispatch of business as that the writ for the election may be issued before the day of such next meeting of the House of Commons; nor in case such application shall be made with respect to any seat in the House of Commons which shall have been vacated in either of the methods before-mentioned by any member of that house against whose election or return to serve in Parliament a petition was depending at the time of the then last prorogation of Parliament or adjournment of the House of Commons.<sup>12</sup>

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41 GEO. 3, c. 63.

An Act to remove doubts respecting the Eligibility of Persons in Holy Orders to sit in the House of Commons. [23rd June 1801.]

*No person ordained a priest or deacon, or being a minister of the Church of Scotland, shall be capable of being elected a member of the House of Commons.*

WHEREAS it is expedient to remove doubts which have arisen respecting the eligibility of persons in holy orders to sit in the House of Commons, and also to make effectual provision for excluding them from sitting

<sup>11</sup> See 26 & 27 Vict. c. 20, s. 1,  
p. 265, *infra*.

<sup>12</sup> See p. 8, *supra*.



therein : Be it therefore declared and enacted . . . that no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is or shall be capable of being elected to serve in Parliament as a member of the House of Commons.<sup>13</sup>

*The election of such person shall be void, and if any person after his election shall be ordained a priest, &c., he shall vacate his seat.—Penalty for sitting or voting in either case, £500 per day, and disqualification to hold any preferment.*

2. And . . . if any person, having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, shall hereafter be elected to serve in Parliament as aforesaid, such election and return shall be void ; and . . . if any person, being elected to serve in Parliament as a member of the House of Commons, shall, after his election, be ordained to the office of priest or deacon, or become a minister of the Church of Scotland, then and in such case the seat of such person shall immediately become void ; and if any such person shall, in any of the aforesaid cases, presume to sit or vote as a member of the House of Commons, he shall forfeit the sum of five hundred pounds for every day in which he shall sit or vote in the said house, to any person or persons who shall sue for the same in any of his Majesty's courts at Westminster ; and the money so forfeited shall be recovered by the person or persons so suing, with full costs of suit, in any of the said courts, by any action of debt, bill, plaint, or information . . . and every person against whom any such penalty or forfeiture shall be recovered by virtue of this Act, shall be from thenceforth incapable of taking, holding, or enjoying any benefice, living, or promotion ecclesiastical, and of taking, holding, or enjoying any office of honour or profit under his Majesty, his heirs, or successors : . . .

#### *Limitation of actions.*

3. Provided also, . . . that no person shall be liable to any forfeiture or penalty inflicted by this Act, unless a prosecution shall be commenced within twelve calendar months after such penalty or forfeiture shall be incurred.

#### *What proof shall be necessary.*

4. And . . . proof of the celebration of divine service according to the rites of the Church of England, or of the Church of Scotland, in any church or chapel consecrated or set apart for public worship, shall be deemed and taken to be *prima facie* evidence of the fact of such person having been ordained to the office of a priest or deacon, or of his being a minister of the Church of Scotland, within the intent and meaning of this Act.

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#### 44 GEO. 3, c. 54.

An Act to consolidate and amend the Provisions of the several Acts relating to Corps of Yeomanry and Volunteers in Great Britain ; and to make further Regulations relating thereto.<sup>14</sup> [5th June 1804.]

#### *Acceptance of commissions not to vacate seats in Parliament.*

58. And be it further declared and enacted, that no person who has accepted or shall hereafter accept of a commission in any corps of yeomanry or volunteers in Great Britain or Ireland shall be deemed in respect thereof to have vacated or to vacate his seat as a member returned to serve in Parliament.

<sup>13</sup> See p. 1, *supra*.

<sup>14</sup> Repealed, so far as relates to

volunteers in Great Britain, 26 & 27 Vict. c. 65, s. 51.

## 52 GEO. 3, C. 38.

An Act for amending the Laws relating to the Local Militia in England.  
[20th April 1812.]

*Commissions in local militia not to vacate seats in Parliament.*

195. And . . . the acceptance of a commission in the local militia shall not vacate the seat of any member returned to serve in Parliament.

## 53 GEO. 3, C. 89.

An Act for the more regular conveyance of Writs for the Election of Members to serve in Parliament. [2nd July 1813.]

*Messenger of the great seal to carry election writs directed to sheriffs of London and Middlesex to their offices; and all other election writs to the General Post Office, to the postmaster general, &c., to be forwarded by post.*

FOR the more expeditious and regular conveyance of writs for the election of members to serve in Parliament, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that when any new Parliament shall at any time hereafter be summoned or called, as also in all cases of vacancy during this present or any future Parliament, the messenger or pursuivant of the great seal or his deputy shall, after the receipt thereof, forthwith carry such of the said writs as shall be directed to the sheriffs of London, or sheriff of Middlesex, to the respective offices of such sheriffs or sheriff; and all such other writs to the General Post Office in London, and there deliver the same to the postmaster or postmasters general for the time being, or to such other person or persons as the said postmaster or postmasters general shall depute to receive the same (and which deputation they are hereby respectively required to make), who on receipt thereof shall give an acknowledgment in writing of such receipt to the said messenger or his deputy from whom the same shall be received, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment, signed by the parties respectively to whom and by whom the same shall be so delivered; and the said postmaster or postmasters general, or such their deputy or deputies, shall dispatch all such writs, free from the charges of postage (which they are hereby authorized to do), by the first post or mail after the receipt thereof, under covers respectively directed to the proper officer or officers to whom the said writs shall be respectively directed, and to no other person whomsoever, accompanied with proper directions to the postmaster or deputy postmaster of the town or place or nearest to the town or place where such officer or officers shall hold his or their office, requiring such postmaster or deputy postmaster forthwith to carry such writs respectively to such office, and to deliver the same there to such officer or officers to whom the same shall be respectively directed, or to his or their deputy or deputies, who are hereby respectively required to give to such postmaster or deputy postmaster a memorandum in writing under his or their hand or hands, acknowledging the receipt of every such writ, and setting forth the day and hour the same was delivered by such postmaster or deputy postmaster, which memorandum shall also be signed by such postmaster or deputy postmaster, who are hereby required to transmit the same by the first or second post afterwards, to the said postmaster or postmasters general or their respective deputies at the said General Post Office in London; who are hereby required to make an entry



thereof in a proper book for that purpose, and to file and keep such memorandum along with the duplicate of the said acknowledgment signed by the said messenger as aforesaid, to the intent that the same may be inspected or produced upon all proper occasions by any person interested in such elections.<sup>15</sup>

*Sheriffs, &c., to give notice to the postmaster general of the place where they hold their offices.*

2. And that the said postmasters general may be duly informed where such officers to whom such writs shall be respectively directed hold their respective offices for the purposes aforesaid, be it further enacted by the authority aforesaid, that the sheriffs and stewarts of the several cities, counties, and stewartries, and all other persons to whom such writs for the election of members to serve in Parliament ought to be and are usually directed, or their respective lieutenants or deputies, shall, within one month after the passing of this Act, severally send up to the said postmasters general an account of the city, town, or place where they shall hold their respective offices for the purpose aforesaid, specifying in such account such particulars as shall be necessary to ascertain the particular situation of such respective offices, and so from time to time, with all convenient speed, as often as the places for holding such offices shall be changed; and also an account of such general post town or place as shall be nearest to such offices respectively, in case such respective offices shall not be in any general post town or place; and the said postmasters general shall make or cause to be made a list of such places, and cause the same to be hung up and kept in some public place in the General Post Office aforesaid.

*Proviso where sheriffs hold their offices in or near the metropolis.*

3. Provided always, . . . that in all cases where any such sheriff or other person to whom such writs ought to be directed shall hold his office within the cities of London or Westminster, or the borough of Southwark, or within five miles thereof, such sheriff or officer shall send such account as aforesaid of the place where he shall hold such office to the messenger of the great seal, instead of the said postmaster general; and the said messenger or his deputy shall carry all such writs to such office, in like manner as is herein-before directed in the case of the sheriffs of London and Middlesex.

*All persons wilfully neglecting to deliver writs, &c., guilty of a misdemeanor.*

6. And . . . every person concerned in the transmitting or delivery of any such writ as aforesaid, who shall wilfully neglect or delay to deliver or transmit any such writ, or accept any fee, or do any other matter or thing in violation of this Act, shall be guilty of a misdemeanor, and may, upon any conviction upon any indictment or information in his Majesty's Court of King's Bench, be fined and imprisoned at the discretion of the court for such misdemeanor.

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#### 10 GEO. 4, c. 7.

An Act for the Relief of His Majesty's Roman Catholic Subjects.

[13th April 1829.]

*No Roman Catholic priest to sit in the House of Commons.—Any person so sitting shall be liable under 41 Geo. 3, c. 63.*

9. No person in holy orders in the Church of Rome shall be capable of being elected to serve in Parliament as a member of the House of Commons;

<sup>15</sup> See p. 11, *supra*.



and if any such person shall be elected to serve in Parliament as aforesaid such election shall be void; and if any person, being elected to serve in Parliament as a member of the House of Commons, shall, after his election, take or receive holy orders in the Church of Rome, the seat of such person shall immediately become void; and if any such person shall, in any of the cases aforesaid, presume to sit or vote as a member of the House of Commons, he shall be subject to the same penalties, forfeitures, and disabilities as are enacted by an Act passed in the forty-first year of the reign of King George the Third, intituled "An Act to remove doubts respecting the eligibility of persons in holy orders to sit in the House of Commons"; and proof of the celebration of any religious service by such person, according to the rites of the Church of Rome, shall be deemed and taken to be *prima facie* evidence of the fact of such person being in holy orders within the intent and meaning of this Act.<sup>16</sup>

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METROPOLITAN POLICE ACT, 1822.

10 GEO. 4, c. 44.

An Act for improving the Police in and near the Metropolis.

[19th June 1829.]

*No justice, &c., under this Act to sit in Parliament.—No justice, receiver, policeman, &c., appointed under this Act to canvass at certain elections.—Penalty, £100.—Proviso.*

18. No justice of the peace or receiver appointed by virtue of this Act shall, during the continuance of such appointment, be capable of being elected or of sitting as a member of the House of Commons; and no justice, receiver, or person belonging to the police force, appointed by virtue of this Act . . . shall, by word, message, writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of any person to be a member to serve in Parliament for any such county, city, or borough; and if any such justice, receiver, or person belonging to the police force shall offend therein, he shall forfeit the sum of one hundred pounds, to be recovered, by any person who will sue for the same, by action of debt, to be commenced within six calendar months after the commission of the offence; and one moiety of the sum so recovered shall be paid to the informer, and the other moiety thereof to the receiver appointed under this Act, to be by him added to and applied as part of the funds for the purposes of the police under this Act: Provided always, that nothing in this enactment contained shall subject any such justice, receiver, or person belonging to the police force, to any penalty for any act done by him at or concerning any of the said elections in the discharge of his official duty.<sup>17</sup>

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REPRESENTATION OF THE PEOPLE ACT, 1832.

2 & 3 WILL. 4, c. 45.<sup>18</sup>

An Act to amend the representation of the People in England and Wales.

[7th June 1832.]

*Sheriff in county elections may act in places of exclusive jurisdiction.*

66. In all matters relative to the election of knights or a knight of the shire to serve in any future Parliament for any county, or for any riding, parts, or division of a county, the sheriff of the county, his under sheriff,

<sup>16</sup> See p. 1, *supra*.

<sup>18</sup> See pp. 12, 16, *supra*.

<sup>17</sup> See pp. 4, 5, *supra*.

or any lawful deputy of such sheriff, shall have power to act in all places having any exclusive jurisdiction or privilege whatsoever, in the same manner as such sheriff, under-sheriff, or deputy may act within any part of such sheriff's ordinary jurisdiction.

*When returning officers may close the poll before the expiration of the time fixed—Adjournment of poll in case of riot.*

70. Nothing in this Act contained shall prevent any sheriff or other returning officer, or the lawful deputy of any returning officer, from closing the poll previous to the expiration of the time fixed by this Act, in any case where the same might have been lawfully closed before the passing of this Act; and where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause finally close the poll, but, in case the proceedings shall be so interrupted or obstructed at any particular polling place or places, shall adjourn the poll at such place or places only until the following day, and if necessary shall further adjourn the same until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed to take the poll at such place or places; and any day whereon the poll shall have been so adjourned shall not, as to such place or places, be reckoned one of the two days of polling at such election within the meaning of this Act; and wherever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and delivered or transmitted to such sheriff or other returning officer; anything herein-before contained to the contrary notwithstanding.<sup>19</sup>

*Penalties on officers for breach of duty.*

76. If any sheriff, returning officer, barrister, overseer, or any person whatsoever shall wilfully contravene or disobey the provisions of this Act or any of them, with respect to any matter or thing which such sheriff, returning officer, barrister, overseer, or other person is hereby required to do, he shall for such his offence be liable to be sued in an action of debt in any of his Majesty's courts of record at Westminster for the penal sum of five hundred pounds; and the jury before whom such action shall be tried may find their verdict for the full sum of five hundred pounds, or for any less sum which the said jury shall think it just that he should pay for such his offence; and the defendant in such action, being convicted, shall pay such penal sum so awarded, with full costs of suit, to the party who may sue for the same: Provided always, that no such action shall be brought except by a person being an elector or claiming to be an elector, or a candidate, or a member actually returned, or other party aggrieved: Provided also, that the remedy hereby given against the returning officer shall not be construed to supersede any remedy or action against him according to the law now in force.

*Definition: "returning officer."*

79. . . . The words "returning officer" shall apply to every person or persons to whom, by virtue of his or their office, either under the present Act or under any former law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called. . . .

<sup>19</sup> See p. 31, *supra*.



## 5 &amp; 6 WILL. 4, c. 36.

An Act to limit the Time of taking the Poll in Boroughs at contested Elections of Members to serve in Parliament to One Day.

[25th August 1835.]

*Adjournment of nomination or of poll in case of riot.*<sup>20</sup>

8. Where the proceedings at any election shall be interrupted or obstructed by any riot, or open violence, whether such proceedings shall consist of the nomination of candidates or of the taking the poll, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination or the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the nomination or with the taking the poll, as the case may be, at the place or places at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling at such election, within the meaning of this Act; and whenever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed and the poll books delivered or transmitted to such sheriff or other returning officer, any thing herein-before or in any other statute to the contrary notwithstanding: Provided always, that this Act shall not be taken to authorize an adjournment to a Sunday; but that in every case in which the day to which the adjournment would otherwise be made shall happen to be a Sunday, Good Friday, or Christmas Day, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made.

*Extent of Act.*

9. Nothing in this Act shall be construed to apply to Ireland or Scotland.

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PARLIAMENTARY VOTERS REGISTRATION ACT, 1843.

6 & 7 VICT. c. 13.<sup>21</sup>

An Act to amend the Law for the Registration of Persons entitled to vote, and to define certain Rights of voting, and to regulate certain Proceedings in the Election of Members to serve in Parliament for England and Wales.<sup>22</sup>

*No inquiry at time of election, except as to identity of the voter, and whether he has already voted.—Oath to be administered to voter, if required.*

31. In all elections whatever of a member or members to serve in Parliament for any county, riding, parts or division of a county, or for

<sup>20</sup> See p. 31, *supra*.

<sup>21</sup> See pp. 31, 51, *supra*.

<sup>22</sup> This Act applies to parliamentary

counties in like manner as to parliamentary boroughs, 48 Vict. c. 15, s. 1.



any city or borough, in England or Wales, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows; (that is to say,) that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them :

1. Are you the same person whose name appears as A.B. on the register of voters now in force for the county of , [or for the riding, parts, or division of the county of ], or for the city [or borough] of [as the case may be]?
2. Have you already voted, either here or elsewhere, at this election for the county of [or for the riding, parts, or division of the county of ], or for the city [or borough] of [as the case may be]?

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly; and the returning officer or his deputy . . . shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form :

“ You do swear [or affirm, as the case may be], that you are the same person whose name appears as A.B. on the register of voters now in force for the county of , [or for the riding, parts, or division of the county of ], or for the city [or borough] of [as the case may be], and that you have not before voted, either here or elsewhere, at the present election for the county of , [or for the riding, parts, or division of the county of ], or for the city [or borough] of [as the case may be].

“ So help you GOD.” <sup>23</sup>

*Voter not to be required to take any other oath.—No vote to be rejected except in consequence of answers to inquiries, or refusal to answer, or to take the oath.—No scrutiny to be allowed by or before returning officer.*

82. Save as aforesaid, it shall not be lawful to require any voter at any election whatever of a member or members to serve in Parliament to take any oath or affirmation, either in proof of his freehold, or of his residence, age, or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding; nor to reject any vote tendered at such election by any person whose name shall be upon the register of voters now in force for the time being, except by reason of his appearing to the returning officer or his deputy, upon putting such questions as aforesaid, or either of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the said questions or either of them, or to take the said oath, or make the said affirmation. . . . ; and no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at any such election; any law, statute, or usage to the contrary notwithstanding.

*Agents may be appointed by candidates to detect personation at the time of polling.*

85. It shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to

<sup>23</sup> These questions have been altered by order of the Local Government Board

dated Oct. 18, 1918, under the R. P. Act, 1918. See p. 51, *supra*.

the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agent for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.<sup>24</sup>

*Returning officer may order persons charged with personation to be taken into custody.—Vote not to be rejected if questions answered in the affirmative; but note of protest to be entered against vote in poll book.*

86. If at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this Act to be put to him at the time of polling, and shall take the <sup>25</sup> oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words, "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book.<sup>26</sup>

*Persons charged with personation to be taken before two justices.—Bail to be taken or person discharged in certain cases; but charge may be subsequently inquired into, and persons charged may be re-arrested.*

87. Every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorized and required to liberate such person on his entering into a recognizance, with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance to answer the said charge; and if no such justice shall be found within four hours after the closing of the said poll then such person shall forthwith be discharged from custody: Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or on some other subsequent day, and if necessary, to issue their warrant for the apprehension of the person so charged.<sup>27</sup>

<sup>24</sup> See p. 59, *supra*.

<sup>25</sup> The oath required by sect. 81 is now the only oath. See repeal of the

bribery oath by 17 & 18 Vict. c. 102.

<sup>26</sup> See pp. 29—30, 60, *supra*.

<sup>27</sup> *Ibid*.



*If justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.*

**88.** If on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial as in the case of other misdemeanors.<sup>27</sup>

*If justices are satisfied that the charge is unfounded, they are to order compensation; to be paid by agent or levied by distress on his goods or those of his principal, or recovered by action of debt.—If party falsely charged accepts compensation, no action to be brought.*

**89.** If the said justices shall on the hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said justices, then it shall be lawful for the said justices, and they are hereby required, to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of ten pounds, nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of her Majesty's superior courts of record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.<sup>28</sup>

*Sheriffs and returning officers to provide constables at polling places.*

**90.** It shall and may be lawful for the high sheriff of any county, and for the mayor or returning officer of any city or borough, and he and they are hereby required, for the purposes aforesaid, to provide a sufficient attendance of constables or peace officers in each booth at the different polling places within their respective counties, cities, or boroughs.

<sup>28</sup> See pp. 29—30, 60, *supra*.



*Poll books at the close of a contested election to be sealed and transmitted to the clerk of the Crown in Chancery.*

93. [Recital in part of 2 & 3 Will. 4, c. 45, ss. 65, 68.] At every contested election of a member or members to serve in Parliament for any county, riding, parts, or division of a county, or for any city or borough in England or Wales, or for the town of Berwick-upon-Tweed, the sheriff, under sheriff, or returning officer, after having declared the state of the poll, and made proclamation of the member or members chosen to serve in Parliament in the manner provided for by the said herein-before in part recited Act, shall forthwith enclose and seal up the several poll books, and tender the same to each of the candidates, to be sealed by them respectively; and in case any candidates shall neglect or refuse to seal the same, the sheriff, under sheriff, or returning officer shall thereupon indorse on one of the said poll books the fact of such neglect or refusal; and every such sheriff, under sheriff, or other returning officer shall, by himself or his agent, as soon as possible after such proclamation as aforesaid, deliver the same poll books so sealed as aforesaid, to the clerk of the crown in the High Court of Chancery, or his deputy, or deliver the same, directed to the said clerk of the crown, to the postmaster or deputy postmaster of the city, town or place wherein such proclamation shall have been made as aforesaid, who on receipt thereof shall give an acknowledgment in writing of such receipt to such sheriff, under sheriff, or returning officer, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment, signed by such sheriff, under sheriff, or returning officer; and the said postmaster or deputy postmaster shall despatch all such poll books, so sealed and directed as aforesaid, by the first post or mail after the receipt thereof, to the General Post Office in London; and the postmaster or postmasters general are hereby directed, immediately on receipt of such poll books, to convey the same to the crown office, and to deliver the same there, so sealed as aforesaid, to the said clerk of the crown or his deputy; and the said clerk of the crown or his deputy is hereby required to give to such postmaster or postmasters general, sheriff, under sheriff, returning officer, or agent delivering the same, a memorandum in writing, acknowledging the receipt of such poll books, and setting forth the day and hour when the same were delivered at the crown office; and the said clerk of the crown or his deputy is hereby required, immediately on receipt of such poll books, to register the same in the books of the said crown office, and to indorse thereon the day and hour upon which he received the same; and every such sheriff, under sheriff, or returning officer is hereby required, at the time of transmitting such poll books as aforesaid through the post office, to address and forward a letter, by the same post or mail to the said clerk of the crown, informing him of such transmission, and giving the number and description of such poll books so transmitted.

*Parties wilfully contravening this Act liable to penalty, recoverable by action of debt.*

97. Every sheriff, under sheriff, clerk of the peace, town clerk, secondary, returning officer, clerk of the crown, postmaster, overseer, or other person, or public officer, required by this Act to do any matter or thing, shall for every wilful misfeasance, or wilful act of commission or omission contrary to this Act, forfeit to any party aggrieved the penal sum of one hundred pounds, or such less sum as the jury before whom may be tried any action to be brought for the recovery of the before-mentioned sum shall consider just to be paid to such party, to be recovered by such party, with full costs of suit, by action for debt in any of her Majesty's superior courts at Westminster: Provided always, that nothing herein contained shall be construed to supersede any remedy or action against any returning officer according to any law now in force.

10 &amp; 11 VICT. c. 21.

An Act to regulate the Stations of Soldiers during Parliamentary Elections. [23rd April 1847.]

*Soldiers to remain in barracks or quarters during elections.*

2. On every day appointed for the nomination or for the election or for taking the poll for the election of a member or members to serve in the Commons House of Parliament no soldier within two miles of any city, borough, town, or place where such nomination or election shall be declared or poll taken shall be allowed to go out of the barrack or quarters in which he is stationed, unless for the purpose of mounting or relieving guard, or for giving his vote at such election; and every soldier allowed to go out for any such purpose within the limits aforesaid shall return to his barrack or quarters with all convenient speed as soon as his guard shall have been relieved or vote tendered.<sup>30</sup>

*Notice of elections to be given to Secretary at War, and commanding officers.*

3. When and so often as any election of any member or members to serve in the Commons House of Parliament shall be appointed to be made, the clerk of the crown in chancery or other officer making out any new writ for such election shall, with all convenient speed after making out the said writ, give notice thereof to the Secretary at War . . . who shall, at some convenient time before the day appointed for such election, give notice thereof in writing to the general officer commanding in each district of Great Britain, who shall thereupon give the necessary orders for enforcing the execution of this Act in all places under his command.<sup>30</sup>

*Saving as to certain soldiers.*

4. Nothing in this Act contained shall be deemed to apply to any soldiers attending as the guards of her Majesty or any person of the royal family, or to the soldiers usually stationed or employed within the Bank of England.<sup>1</sup>

#### ELECTION COMMISSIONERS ACT, 1852.

15 &amp; 16 VICT. c. 57.

An Act to provide for more effectual Inquiry into the Existence of Corrupt Practices at Elections for Members to serve in Parliament.

[30th June 1852.]

[*Preamble.*]

*Appointment of commissioners to inquire into corrupt practices at elections.*

1. Where by a joint address of both Houses of Parliament it shall be represented to her Majesty that a committee of the House of Commons appointed to try an election petition, or a committee of that House appointed to inquire into the existence of corrupt practices in any election or elections of a member or members to serve in Parliament, have reported to the House that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county, division of a county, city, borough, university, or place in the United Kingdom electing or sharing in the election of a member or members to serve in

<sup>30</sup> See p. 11, *supra*.

<sup>1</sup> See p. 11, *supra*.



Parliament, at any election or elections of such members or member, and the said Houses shall thereupon pray her Majesty to cause inquiry to be made under this Act, by persons named in such address, such persons being (where the inquiry to be made relates to a place in England or Ireland) barristers-at-law of not less than seven years standing, or (where such inquiry relates to a place in Scotland) advocates of not less than seven years standing, and not being members of Parliament, or holding any office or place of profit under the Crown, other than that of a recorder of any city or borough, it shall be lawful for her Majesty, by warrant under her Royal Sign Manual, to appoint the said persons to be commissioners for the purpose of making inquiry into the existence of such corrupt practices; and in case any of the commissioners so appointed die, resign, or become incapable to act, it shall be lawful for the surviving or continuing commissioners or commissioner to act in such inquiry as if they or he had been solely appointed to be commissioners or a sole commissioner for the purposes of such inquiry, and (as to such sole commissioner) as if this Act had authorized the appointment of a sole commissioner; and all the provisions of this Act concerning the commissioners appointed to make any such inquiry shall be taken to apply to such surviving or continuing commissioner or commissioners.<sup>2</sup>

*Commissioners to be sworn.*

2. Every commissioner appointed in pursuance of this Act shall, before beginning to act in the execution of this Act, take the following oath; (that is to say,)

"I A.B. do swear, that I will truly and faithfully execute the powers and trusts vested in me by the Election Commissioners Act, 1852, according to the best of my knowledge and judgment.

"So help me GOD."

And every such commissioner appointed in England or Ireland shall take such oath before a justice of the Court of Queen's Bench, or a baron of the Court of Exchequer, in England or Ireland respectively; and every such commissioner appointed in Scotland shall take such oath before a judge of the Court of Session in Scotland.

*Secretary and clerks to be appointed.*

3. It shall be lawful for any commissioners appointed under this Act to appoint, and at their pleasure to dismiss, a secretary, and so many clerks, messengers, and officers as shall be thought necessary by one of her Majesty's Principal Secretaries of State, for the purpose of conducting the inquiry to be made by them, and to pay to such secretary, clerks, messengers, and officers such salaries and allowances as shall be thought reasonable by the Treasury.

*Meetings of commissioners.*

4. The commissioners appointed under this Act to make inquiry as aforesaid in relation to any county, division of a county, city, borough, university, or place, shall, upon their appointment, or within a reasonable time afterwards, go to such county, division of a county, city, borough, university, or place, and shall from time to time hold meetings for the purposes of such inquiry at some convenient place within the same, or within ten miles thereof, and shall have power to adjourn such meetings from time to time, and from any one place to any other place within such county, division of a county, city, borough, university, or place, or within ten miles thereof, as to them may seem expedient; and such commissioners shall give notice of their appointment, and of the time and place of holding their first meeting, by publishing the same in some newspaper in general circulation in such county, division of a county, city, borough, university, or place, or the neighbourhood thereof: Provided always, that such commissioners shall not adjourn the inquiry for any period exceed-

<sup>2</sup> See p. 234, *supra*.



ing one week, without the consent and approbation of one of her Majesty's Principal Secretaries of State.

*Meetings in London and Westminster.*

5. Provided also, that it shall be lawful for the said commissioners, with such consent and approbation as aforesaid, to hold meetings of the said commissioners in the cities of London or Westminster, and to adjourn the same from time to time, as they may deem fit.

*Inquiry by the commissioners.*

6. Such commissioners shall, by all such lawful means as to them appear best, with a view to the discovery of the truth, inquire into the manner in which the election in relation to which such committee as aforesaid may have reported to the House of Commons, or, where the report of such committee has referred to two or more elections, the latest of such elections, has been conducted, and whether any corrupt practices have been committed at such election, and, if so, whether by way of the gift or loan or the promise of the gift or loan of any sum of money or other valuable consideration to any voter or voters, or to any other person or persons in his or their behalf, for the promise or the giving of his or their vote or votes, or for his or their refraining or promising to refrain from giving his or their vote or votes, at such election, or for his or their procuring or undertaking to procure the votes of other electors at such election, or whether by the payment of any sum of money or loan or other valuable consideration whatsoever to any voter, or to any other person on his behalf, before, during, or after the termination of such election, by way of head money, or in compliance with any usage or custom in the county, division of a county, city, borough, university, or place to which the inquiry relates, or how otherwise, or whether any sum of money or other valuable consideration whatsoever has been paid to any voter, or to any other person on his behalf, after the termination of such election, as a reward for giving or for having refrained from giving his vote at such election; and in case such commissioners find that corrupt practices have been committed at the election into which they are herein-before authorized to inquire, it shall be lawful for them to make the like inquiries concerning the latest previous election for the same county, division of a county, city, borough, university, or place; and upon their finding corrupt practices to have been committed at that election it shall be lawful for them to make the like inquiries concerning the election immediately previous thereto for such county, division of a county, city, borough, university, or place, and so in like manner from election to election, as far back as they may think fit; but where upon inquiry as aforesaid concerning any election such commissioners do not find that corrupt practices have been committed thereat, they shall not inquire concerning any previous election; and such commissioners shall from time to time report to her Majesty the evidence taken by them, and what they find concerning the premises, and especially such commissioners shall report with respect to each election the names of all persons whom they find to have been guilty of corrupt practice at such election, and as well of those who have given bribes for the purchase or for the purpose of purchasing the votes of others as of those who have themselves received money or any other valuable consideration for having given or having refrained from giving, or for the purpose of inducing them to give or to refrain from giving their votes at such election, and also the names of all persons whom they find to have given to others, or to have received themselves, payments by way of head money, or as a reward for giving or refraining from giving their votes at such election, and all other things whereby in the opinion of the said commissioners the truth may be better known touching the premises.<sup>3</sup>

<sup>3</sup> See p. 234, *supra*.

*Reports to be laid before Parliament.*

7. Every report which such commissioners make to her Majesty in pursuance of this Act shall be laid before Parliament within one calendar month next after such report is made, if Parliament be then sitting, or, if Parliament be not then sitting, then within one calendar month next after the then next meeting of Parliament.

*Attendance of persons and production of books, &c.—Proviso as to admissibility in evidence of statements.*

8. It shall be lawful for such commissioners, by a summons under their hands and seals, or under the hand and seal of any one of them, to require the attendance before them, at a place and time to be mentioned in the summons, which time shall be a reasonable time from the date of such summons, of any persons whomsoever, whose evidence, in the judgment of such commissioners or commissioner, may be material to the subject matter of the inquiry to be made by such commissioners, and to require all persons to bring before them such books, papers, deeds, and writings, as to such commissioners or commissioner appear necessary for arriving at the truth of the things to be inquired into by them under this Act; all which persons shall attend such commissioners, and shall answer all questions put to them by such commissioners touching the matters to be inquired into by them, and shall produce all books, papers, deeds, and writings required of them, and in their custody or under their control, according to the tenor of the summons: Provided always, that no statement made by any person in answer to any question put by such commissioner shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding, civil or criminal.

*Examination on oath, &c.*

11. It shall be lawful for any such commissioners, or one of them, to administer an oath, or an affirmation where an affirmation would be admitted in a court of justice on the ground of religious scruples, to all persons who are examined before them touching the things to be inquired into by them under this Act.

*Penalty for non-attendance, or refusing to give evidence or produce books, &c.*

12. If any person on whom any summons shall have been served, by the delivery thereof to him or by the leaving thereof at his usual place of abode, fail to appear before the said commissioners at the time and place specified in such summons, it shall be lawful for the said commissioners to certify such default under their hands and seals, or under the hand and seal of any one of them, to any of her Majesty's superior courts in England or Ireland or to the Court of Session in Scotland, or to the Lord Ordinary on the bills in the said court, as the case may be; and thereupon such court or judge shall proceed against the person so failing to attend, in the same manner as if the said person had failed to obey any writ of subpoena, or any process issuing out of the said court; and if any person so summoned to attend as aforesaid, and having appeared before the said commissioners, shall refuse to be sworn, or to make answer to such questions as are put to him touching the matters in question by the said commissioners, or to produce and show to the said commissioners any papers, books, deeds, or writings being in his possession or under his control, which the commissioners may deem necessary to be produced; or if any person shall be guilty of any contempt of the said commissioners or their office, the said commissioners shall have such and the same powers, to be exercised in the same way, as any judge of any of her Majesty's superior courts of England or Ireland, or of the Court of Session in Scotland, sitting under any commission, may now by law exercise in that



behalf; and all head-boroughs, gaolers, constables, and bailiffs shall and they are required to give their aid and assistance to the said commissioners in the execution of their office.

*Expences of witnesses.*

14. The said commissioners shall have power, if they deem fit, to award to any witness summoned to appear before them a reasonable sum for his or her travelling expences, and for his or her maintenance, according to a scale to be determined and approved of by the Treasury; and the said commissioners shall certify to the Treasury the names of the said witnesses, together with the sums allowed to each; and the said commissioners shall pay to the said witnesses the said sums so allowed as aforesaid, out of any money which may be provided by Parliament for the purposes of the said commission.

*Protection of commissioners.*

16. The commissioners shall have such and the like protection and privileges, in case of any action brought against them for any act done or omitted to be done in the execution of their duty, as is now by law given by any Act or Acts now or hereafter to be in force to justices acting in execution of their office.

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PARLIAMENTARY ELECTIONS ACT, 1853.

16 & 17 VICT. c. 68.<sup>4</sup>

An Act to limit the Time for proceeding to Election in Counties and Boroughs in England and Wales, and for Polling at Elections for the Universities of Oxford and Cambridge, and for other Purposes.

[15th August 1853.]

*Direction of writs in county, university, and borough elections.*

1. The writ for any election hereafter to be directed to the sheriff of any county in England or Wales (other than the county of a city or of a town) shall require such sheriff to cause election to be made of a knight or knights to serve in Parliament for such county, and for any riding, parts, or division thereof only, and not further or otherwise; the writ for making any election of a member or members to serve in Parliament . . . for every borough, town corporate, port, or place returning members to serve in Parliament in England and Wales, shall hereafter be directed . . . to the returning officers of such boroughs, towns corporate, ports, and places respectively; and such . . . returning officers shall thereupon in due course of law proceed to election, and after such election certify the same, together with the writ, according to the directions thereof; all such writs hereafter to be issued, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs, shall be and the same are hereby authorized to be framed and expressed in such manner and form as may be necessary for carrying the provisions of this Act into effect.<sup>5</sup>

*Polls not to be taken at inns, &c., without consent of all the candidates.*

6. No poll at any election for members of Parliament in England and Wales shall be taken at any inn, hotel, tavern, public-house, or other premises licensed for the sale of beer, wine, or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing.<sup>6</sup>

<sup>4</sup> See p. 8, Note 2, *supra*.

<sup>5</sup> See p. 25, *supra*.

<sup>6</sup> See Art. 3, p. 11, *supra*.



## 17 &amp; 18 VICT. C. 57.

An Act to amend the Law relating to the Appointment of Returning Officers in certain cases. [31st July 1854.]

*Writs for borough elections to be directed to returning officer or his deputy, and in their absence to the sheriff of the county; who shall perform duties of returning officers in boroughs in absence of such officers, &c.*

1. Every writ for making any election of a member to serve in Parliament for any borough, city, or town shall be directed to the returning officer of the said borough or his deputy, and in their absence to the sheriff of the county in which the said city, borough, or town is situate; and in all cases whatever, whenever there shall be, either from temporary vacancy or from some other cause, no person duly qualified in any borough, city, or town to perform the duties of a returning officer for the same, the sheriff of the county in which such borough, city, or town is situate shall be charged with the execution of the said writ, and shall execute the same and in all respects perform the duties of and incidental to the office of returning officer: Provided always, that it shall not be lawful for the said sheriff to receive or execute the writ, except when there shall be no person within the said borough, city, or town legally qualified and competent as returning officer to execute the same.<sup>7</sup>

## CORRUPT PRACTICES PREVENTION ACT, 1854.

## 17 &amp; 18 VICT. C. 102.

An Act to consolidate and amend the Laws relating to Bribery, Treating, and undue Influence at Elections of Members of Parliament.<sup>8</sup> [10th August 1854.]

*Bribery defined.*

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election:<sup>9</sup>
2. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election:<sup>10</sup>
3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise,

<sup>7</sup> See p. 12, *supra*.

<sup>8</sup> This Act, which by sect. 39 was of temporary duration, has as to so much as is continued by 46 & 47 Vict. c. 51,

been continued by the Expiring Laws Continuance Acts.

<sup>9</sup> See pp. 91, 95, 97, *supra*.

<sup>10</sup> See pp. 91, 97, 102, *supra*.

procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election : <sup>11</sup>

4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election : <sup>12</sup>
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election : <sup>13</sup>

... Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses bonâ fide incurred at or concerning any election. <sup>13</sup>

*Bribery further defined.*

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :

1. Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election : <sup>14</sup>
2. Every person who shall, after any election, directly or indirectly, by himself, or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election : <sup>15</sup>

*No cockades, &c., to be given at elections.*

7. No candidate, before, during, or after any election, shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction ; and every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit . . . . <sup>16</sup>

*Voters not compellable to serve as special constables during elections.*

8. No person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act ; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding.

*Costs and expenses of prosecutions for offences.*

10. It shall be lawful for any criminal court before which any prosecution shall be instituted for any offence against the provisions of this Act

<sup>11</sup> See pp. 91, 105, *supra*.

<sup>12</sup> See pp. 92, 105, *supra*.

<sup>13</sup> See pp. 92, 106, *supra*.

<sup>14</sup> See p. 92, *supra*.

<sup>15</sup> See p. 92, *supra*.

<sup>16</sup> See pp. 177, 179, *supra*.



to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions.

*Costs where judgment for defendant.*

12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

*Conditions on which prosecutor entitled to costs.*

13. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds, (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment,) with the conditions following; that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

*Parties, and their husbands or wives, to be competent witnesses.*

35. On the trial of any action for recovery of any pecuniary penalty under this Act, the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives, are competent and compellable to give evidence in actions and suits under the Evidence Act, 1851, and the Evidence Amendment Act, 1853, but subject to and with the exceptions contained in such several Acts: Provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

*Short title.*

37. In citing this Act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

*Interpretation.*

33. Throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county or combined counties, respectively returning a member or members to serve in Parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as herein-before defined), returning a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman presiding in any court held for the revision of the lists of voters, or his deputy, in



Ireland, and a sheriff or sheriff's court of appeal in Scotland, and every other person whose duty it may be to hold a court for the revision and correction of the lists or registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in Parliament; . . .

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ELECTION OF MEMBERS DURING RECESS ACT, 1858.  
21 & 22 VICT. C. 110.

An Act to extend the Act of the Twenty-fourth Year of King George the Third, Chapter Twenty-six, for issuing Writs during any Recess of the House of Commons, whether by Prorogation or Adjournment.

[2nd August 1858.]

*Speaker may, during recess, issue warrants for making out new writs in the room of members accepting certain offices.*

1. It shall and may be lawful for the Speaker of the House of Commons for the time being, during any recess of the House as aforesaid, to issue his warrant to the Clerk of the Crown to make out a new writ for election of a member of the House in the room of any member who has, since such adjournment or prorogation, accepted any office whereby he has, either by the express provision of any Act of Parliament or by any previous determination of the House of Commons, vacated his seat in the House of Commons, so soon as he shall have been gazetted thereto in any of the Queen's Gazettes, and a notice thereof, together with a copy of the Gazette, shall have been sent to the Speaker by a certificate under the hands of two members of the House of Commons, according to the form in the schedule to this Act annexed, or to the like effect.<sup>17</sup>

*Members accepting office to notify the same to the Speaker, &c.*

2. Provided always, that any member of the House of Commons accepting any such office as aforesaid shall forthwith notify his acceptance thereof to the Speaker, either by writing under the hand of such member or by his countersigning the said certificate relating to such acceptance; and the Speaker shall not issue his warrant in pursuance of this Act without having received such notification, and until fourteen days after he shall have caused notice of his having received such certificate and notification to be inserted in the London Gazette.<sup>18</sup>

*If case appears to the Speaker doubtful, warrant not to be issued.*

3. Provided always, that in any case in which it shall appear to the Speaker to be doubtful whether the acceptance of any office which has been certified to him as aforesaid has the effect of vacating the seat of the person so appointed, it shall be lawful for the said Speaker, instead of issuing his warrant in pursuance of this Act, to reserve such question for the decision of the House.<sup>18</sup>

*Act not to apply to certain offices.*

4. Provided always, that this Act shall not in any way apply to the acceptance of any of the following offices; that is to say the office of steward or bailiff of Her Majesty's three Chiltern Hundreds of Stoke, Desborough, and Boneham, or of the Manor of East Hendred, or of the Manor of Northstead, or of the Manor of Hempholme, or of escheator of Munster.<sup>18</sup>

<sup>17</sup> See p. 9, *supra*.

<sup>18</sup> See p. 9, *supra*.

*Application of 24 Geo. 3, sess. 2, c. 26.*

5. All the other provisions of the said recited Act shall be applicable to the cases provided for in this Act.<sup>19</sup>

SCHEDULE.

We, whose names are underwritten, being two members of the House of Commons, do hereby certify that M.P., late a member of the said House, serving as one of the knights of the shire for the county of [or as the case may be], has accepted the office of member of the Council for India [or as the case may be], and has been gazetted thereto in the Gazette, dated the      day of      , and has thereby vacated his seat; and we give you this notice, to the intent that you may issue your warrant to the Clerk of the Crown to make out a new writ for the election of a knight to serve in Parliament for the said county of      [or as the case may be], in the room of the said M.P.

Given under our hands, this      day of      .

A.B.  
C.D.

To the Speaker of the House of Commons.

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26 & 27 VICT. c. 20.

An Act to further limit and define the Time for proceeding to Election during the Recess. [8th June 1863.]

*Recited Acts to be construed as if six and not fourteen days' notice had been originally in said Acts.*

1. The Act of the twenty-fourth year of George the Third, chapter twenty-six, the Act of the fifty-second year of George the Third, chapter one hundred and forty-four, and the Act of the twenty-first and twenty-second years of Victoria, chapter one hundred and ten, shall be so construed as if six and not fourteen days' notice had been originally in the said Acts; and this Act and the said Acts shall be construed and read together.<sup>20</sup>

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CORRUPT PRACTICES PREVENTION ACT, 1863.

26 & 27 VICT. c. 29.

An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament.<sup>21</sup> [8th June 1863.]

*General allegations sufficient in indictments, &c.*

6. In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connexion with which the offence is intended to be alleged to have been committed, guilty of bribery, treating, or undue influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat.

<sup>19</sup> See p. 8, *supra*.

<sup>20</sup> See p. 9, *supra*.

<sup>21</sup> Continued by Expiring Laws Continuance Acts.

26 &amp; 27 VICT. c. 65.

An Act to consolidate and amend the laws relating to the Volunteer Force in Great Britain. [21st July 1863.]

5. . . . The acceptance of a commission in the Volunteer Force by a member of the Commons House of Parliament shall not render his seat vacant.

# REPRESENTATION OF THE PEOPLE ACT, 1867.

30 &amp; 31 VICT. c. 102.

An Act further to amend the Laws relating to the Representation of the People in England and Wales. [15th August 1867.]

[Preamble.]

*Short title.*

1. This Act shall be cited for all purposes as "The Representation of the People Act, 1867."

## *Application of Act.*

2. This Act shall not apply to Scotland or Ireland, nor in anywise affect the election of members to serve in Parliament for the Universities of Oxford or Cambridge.

*Rooms to be hired for taking polls, wherever they can be obtained.*

37. At every contested election for any county or borough, unless some building or place belonging to the county or borough is provided for that purpose, the returning officer shall, whenever it is practicable so to do, instead of erecting a booth, hire a building or room for the purpose of taking the poll.<sup>22</sup>

*Corrupt payment of rates to be punishable as bribery, on part of both payer and voter.*

49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privy any such payment as in this section is mentioned is made shall also be guilty of bribery, and punishable accordingly.<sup>23</sup>

*Returning officer, &c., acting as agent guilty of misdemeanor.*

50. No returning officer for any county or borough, nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them, shall so act, he shall be guilty of a misdemeanor.<sup>24</sup>

<sup>22</sup> See p. 25, *supra*.

<sup>23</sup> See p. 104, *supra*.

<sup>24</sup> See pp. 32, 55, *supra*.



*Demise of Crown not to dissolve Parliament.*

51. The Parliament in being at any future demise of the Crown shall not be determined or dissolved by such demise, but shall continue so long as it would have continued but for such demise, unless it should be sooner prorogued or dissolved by the Crown, anything in the Succession to the Crown Act, 1707, in any way notwithstanding.

*Member returned after accepting any office of profit from the Crown, as in schedule (H.), not required to vacate his seat on acceptance of another office.*

52. Where a person has been returned as a member to serve in Parliament since the acceptance by him from the Crown of any office described in schedule (H.) to this Act annexed, the subsequent acceptance by him from the Crown of any other office or offices described in such schedule in lieu of and in immediate succession the one to the other shall not vacate his seat.

*This Act, as far as consistent, to be construed with enactments now in force.—Construction of 2 & 3 Will. 4, c. 45, ss. 24, 25.*

59. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the enactments for the time being in force relating to the representation of the people, and with the Registration Acts; . . .

*Interpretation of terms: "Member"; "Election"; "County"; "Borough"; "The Registration Acts" (6 & 7 Vict. c. 18; 28 Vict. c. 36).*

61. The following terms shall in this Act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction; (that is to say,)

\* \* \* \* \*

"Member" shall include a knight of the shire:

"Election" shall mean an election of a member or members to serve in Parliament:

"County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts or divisions of a county returning a member or members to serve in Parliament:

"Borough" shall mean any borough, city, place, or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in Parliament:

\* \* \* \* \*

"The Registration Acts" shall mean the Parliamentary Voters Registration Act, 1843, and the County Voters Registration Act, 1865, and any other Acts or parts of Acts relating to the registration of persons entitled to vote at and proceedings in the election of member to serve in Parliament for England and Wales.

## SCHEDULE (H.).

*Offices of Profit referred to in this Act.*<sup>25</sup>

Lord High Treasurer.

Commissioner for executing the offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.

President of the Privy Council.

Vice-President of the Committee of Council for Education.

Comptroller of Her Majesty's Household.

Treasurer of Her Majesty's Household.

<sup>25</sup> See p. 9, *supra*.

Vice-Chamberlain of Her Majesty's Household.  
 Equerry or Groom in Waiting on Her Majesty.  
 Any Principal Secretary of State.  
 Chancellor and Under Treasurer of Her Majesty's Exchequer.  
 Paymaster General.  
 Postmaster General.  
 Lord High Admiral.  
 Commissioner for executing the office of Lord High Admiral.  
 Commissioner of Her Majesty's Works and Public Buildings.  
 President of the Committee of Privy Council for Trade and Plantations.  
 Chief Secretary for Ireland.  
 Commissioner for administering the Laws for the Relief of the Poor in England.  
 Chancellor of the Duchy of Lancaster.  
 Judge Advocate General.  
 Attorney General for England.  
 Solicitor General for England.  
 Lord Advocate for Scotland.  
 Solicitor General for Scotland.  
 Attorney General for Ireland.  
 Solicitor General for Ireland.

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31 & 32 VICT. c. 72.

An Act to amend the Law relating to Promissory Oaths. [31st July 1868.]

*No person to be required or authorized to take the oath of allegiance except the persons herein specified, or to take the oath of assurance in Scotland.*

9. No person shall be required or authorized to take the oaths of allegiance, supremacy, and abjuration, or any of such oaths, or any oath substituted for such oaths, or any of them, or to make any declaration to the like effect of such oaths, or any of them, except the persons required to take the oath of allegiance by this Act and the Clerical Subscription Act, 1865, and the Parliamentary Oaths Act, 1866, or one of such Acts, any Act of Parliament, charter, or custom to the contrary notwithstanding; and no person shall be required or authorized to take the oath of assurance in Scotland.

PART 2.—OATHS TO BE ABOLISHED.

*Substitution of declaration for oaths.—Regulations as to substitution of declarations for oaths.*

12. The following regulations shall be enacted with respect to the substitution as declarations for oaths; (that is to say,)

5. The making a declaration in pursuance of this section instead of oath shall in all respects have the same effect as the taking the oath for which such declaration is substituted would have had if this Act had not passed.

*Penalty on not making declaration substituted for oath by this Act.*

13. If any person required by this Act to make a declaration instead of an oath declines or neglects to make such declaration, he shall be subject to the same penalties and disabilities, if any, as he would have been subjected to for declining or neglecting to take the oath for which the declaration provided by this Act is substituted.

## PART 3.

*Saving clause.—This Act not to affect matters herein stated.*

14. Nothing in this Act contained shall affect—

7. The oath taken by aliens on being naturalized, . . .

*Application to declarations of powers of alteration of oaths.*

15. Where a declaration has been substituted for an oath under this Act, any person, guild, body corporate, or society which before the passing of this Act had power to alter such oath, or to substitute another oath in its place, may exercise a like power with regard to such declaration.

## PARLIAMENTARY ELECTIONS ACT, 1868.

31 & 32 VICT. C. 125.<sup>26</sup>

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of Corrupt Practices at Parliamentary Elections. [31st July 1868.]

*Definition and jurisdiction of court.*

2. The expression "the Court" shall, for the purposes of this Act, in its application to England mean the Court of Common Pleas at Westminster,<sup>27</sup> and in its application to Ireland the Court of Common Pleas at Dublin; and such Court shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if such petition were an ordinary cause within their jurisdiction.

*Interpretation.*

3. The following terms shall in this Act have the meanings herein-after assigned to them, unless there is something in the context repugnant to such construction; (that is to say,)

"Metropolitan district" shall mean the City of London and the liberties thereof, and any parish or place subject to the jurisdiction of the Metropolitan Board of Works:

"Election" shall mean an election of a member or members to serve in Parliament:

"County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts, or division of a county returning a member or members to serve in Parliament:

"Borough" shall mean any borough, university, city, place, or combination of places, not being a county as herein-before defined, returning a member or members to serve in Parliament:

\* \* \* \* \*

"Corrupt practices" or "corrupt practice" shall mean bribery, treating, and undue influence, or any of such offences, as defined by Act of Parliament, or recognized by the common law of Parliament:

"Rules of court" shall mean rules to be made as herein-after mentioned:

"Prescribed" shall mean "prescribed by the rules of court."

<sup>26</sup> See pp. 55, 205, 209, 210, 234, *supra*.

<sup>27</sup> Now the King's Bench Division.



*Provision as to Speaker.*

4. For the purposes of this Act "Speaker" shall be deemed to include Deputy Speaker; and when the office of Speaker is vacant, the Clerk of the House of Commons, or any other officer for the time being performing the duties of the Clerk of the House of Commons, shall be deemed to be substituted for and to be included in the expression "the Speaker."

*Presentation and service of Petition.—To whom and by whom election petition may be presented.*

5. A petition complaining of an undue return or undue election of a member to serve in Parliament for a county or borough may be presented to the Court of Common Pleas at Westminster, if such county or borough is situate in England, or to the Court of Common Pleas at Dublin, if such county or borough is situate in Ireland, by any one or more of the following persons:

1. Some person who voted or who had a right to vote at the election to which the petition relates; or
  2. Some person claiming to have had a right to be returned or elected at such election; or
  3. Some person alleging himself to have been a candidate at such election:
- And such petition is herein-after referred to as an election petition.<sup>28</sup>

*Regulations as to presentation of election petition.*

6. The following enactments shall be made with respect to the presentation of an election petition under this Act:

1. The petition shall be signed by the petitioner, or all the petitioners, if more than one: <sup>29</sup>
2. The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment: <sup>30</sup>
3. Presentation of a petition shall be made by delivering it to the prescribed officer, or otherwise dealing with the same in manner prescribed: <sup>1</sup>
4. At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner—
  - (a) to any person summoned as a witness on his behalf, or
  - (b) to the member whose election or return is complained of (who is herein-after referred to as the respondent),
 shall be given on behalf of the petitioner: <sup>2</sup>
5. The security shall be to an amount of one thousand pounds; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.<sup>3</sup>

<sup>28</sup> See pp. 203, 215, *supra*.

<sup>29</sup> See pp. 215, 218, *supra*.

<sup>30</sup> See p. 203, *supra*.

<sup>1</sup> See p. 215, *supra*.

<sup>2</sup> See p. 205, *supra*.

*Copy of petition to be sent to returning officer.*

7. On presentation of the petition the prescribed officer shall send a copy thereof to the returning officer of the county or borough to which the petition relates who shall forthwith publish the same in the county or borough, as the case may be.<sup>3</sup>

*Service of notice of petition, and of nature of security, on respondent.—  
Recognizance may be objected to.*

8. Notice of the presentation of a petition under this Act, and of the nature of the proposed security, accompanied with a copy of the petition, shall within the prescribed time, not exceeding five days after the presentation of the petition, be served by the petitioner on the respondent; and it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, within a further prescribed time, not exceeding five days from the date of the service on him of the notice, to object in writing to such recognizance, on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.<sup>2</sup>

*Determination of objection to recognizance.*

9. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed, it shall be lawful for the petitioner, within a further prescribed time, not exceeding five days, to remove such objection, by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient.

If on objection made the security is decided to be insufficient, and such objection is not removed in manner herein-before mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue.

*List of petitions at issue to be made.*

10. The prescribed officer shall as soon as may be make out a list of all petitions under this Act presented to the court of which he is such officer, and which are at issue,<sup>4</sup> placing them in the order in which they were presented, and shall keep at his office a copy of such list, herein-after referred to as the election list, open to the inspection in the prescribed manner of any person making application.

Such petitions, as far as conveniently<sup>5</sup> may be, shall be tried in the order in which they stand in such list.

*Trial of a Petition.—Mode of trial of election petitions.*

11.<sup>6</sup> The following enactments shall be made with respect to the trial of election petitions under this Act:

<sup>3</sup> See p. 215, *supra*.

<sup>4</sup> Petitions are deemed to be "at issue" as soon as the security is given; sect. 9.

<sup>5</sup> The Court has jurisdiction in special circumstances to order the trial of a petition out of its order of presentation, as was done by Lawrance, J., after consultation with Phillimore, J., in *Hartlepool*, pp. 7, 10.

<sup>6</sup> By 42 & 43 Vict. c. 75, s. 2, p. 302, *infra*, the trial of an election petition and the hearing of an application for the withdrawal of an election petition are to be conducted before two judges. With respect to the rota of judges, see that section, and also 44 & 45 Vict. c. 68, s. 13, *infra*, p. 302. See also p. 222, *supra*.



1. The trial of every election petition shall be conducted before a puisne judge<sup>7</sup> of one of Her Majesty's Superior Courts of Common Law at Westminster or Dublin, according as the same shall have been presented to the court at Westminster or Dublin, to be selected from a rota to be formed as herein-before mentioned.
  - 2.<sup>8</sup> The members of each of the Courts of Queen's Bench, Common Pleas, and Exchequer in England and Ireland shall respectively, on or before the third day of Michaelmas term in every year, select, by a majority of votes, one of the puisne judges of such court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year.
  - 3.<sup>8</sup> If in any case the members of the said court are equally divided in their choice of a puisne judge to be placed on the rota, the Chief Justice of such court (including under that expression the Chief Baron of the Exchequer) shall have a second or casting vote.<sup>9</sup>
  4. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year.
  - 5.<sup>8</sup> In the event of the death or the illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the court to which he belongs shall fill up the vacancy by placing on the rota another puisne judge of the same court.
  6. The judges for the time being on the rota shall, according to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement.
  - 7.<sup>8</sup> Where it appears to the judges on the rota, after due consideration of the list of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, each of the said courts (that is to say), the Court of Exchequer, the Court of Common Pleas, and Court of Queen's Bench, in the order named, shall, on and according to the requisition of such judges on the rota, select, in manner herein-before provided, one of the puisne judges of the court to try election petitions for the ensuing year; and any judge so selected shall, during that year, be deemed to be on the rota for the trial of election petitions:
- \* \* \* \* \*
- 9.<sup>8</sup> Every election petition shall, except where it raises a question of law for the determination of the court, as herein-after mentioned, be tried by one of the judges herein-before in that behalf mentioned, herein-after referred to as the judge, sitting in open court without a jury.
  10. Notice of the time and place at which an election petition will be tried shall be given, not less than fourteen days before the day on which the trial is held, in the prescribed manner.
  11. The trial of an election petition in the case of a petition relating to a borough election shall take place in the borough, and in the case of a petition relating to a county election in the county: Provided always, that if it shall appear to the court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough or county, it shall be lawful for the court to appoint such other place for the trial as shall appear most convenient: Provided also, that in the case of a petition relating to any

<sup>7</sup> A petition is now tried before *two* judges of the King's Bench Division.

<sup>8</sup> Sub-sects. 2, 3, 5, 7, 9, are repealed as to England: 55 & 56 Vict. c. 14 (S. L. R.).

<sup>9</sup> This sub-section is now repealed as to England. The Lord Chief Justice, or, in his absence, the senior judge present, has now a casting vote: 44 & 45 Vict. c. 68, s. 13



- of the boroughs within the metropolitan district, the petition may be heard at such place within the district as the court may appoint.<sup>10</sup>
12. The judge presiding at the trial may adjourn the same from time to time, and from any one place to any other place within the county or borough, as to him may seem expedient.
  13. At the conclusion of the trial the judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Speaker, and upon such certificate being given such determination shall be final to all intents and purposes.<sup>11</sup>
  - 14.<sup>12</sup> Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall, in addition to such certificate, and at the same time, report in writing to the Speaker as follows:
    - (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice:
    - (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice:
    - (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates.<sup>13</sup>
  15. The judge may at the same time make a special report to the Speaker as to any matters arising in the course of the trial an account of which in his judgment ought to be submitted to the House of Commons.<sup>13</sup>
  16. Where, upon the application of any party to a petition made in the prescribed manner to the court, it appears to the court that the case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the court, and the decision of the court shall be final; and the court shall certify to the Speaker its determination in reference to such special case.<sup>14</sup>

*Reservation of questions for the court.*

12. Provided always, that if it shall appear to the judge on the trial of the said petition that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the Court of Common Pleas, then it shall be lawful for the said judge to postpone the granting of the said certificate until the determination of such question or questions by the court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a judge on a trial at Nisi Prius.

*House of Commons to carry out certificate or report.*

13. The House of Commons, on being informed by the Speaker of such certificate and report or reports, if any, shall order the same to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.

<sup>10</sup> See p. 223, *supra*.

<sup>11</sup> In the event of the judges differing, they must certify their difference: 42 & 43 Vict. c. 75, s. 2. See also p. 233, *supra*.

<sup>12</sup> Extended, with certain modifications, to illegal practices: 46 & 47 Vict. c. 51, s. 11.

<sup>13</sup> See p. 233, *supra*.

<sup>14</sup> See p. 233, *supra*.

*Order on special report.*

14. Where the judge makes a special report, the House of Commons may make such order in respect of such special report as they think proper.

*Report of judge as to corrupt practices to have same effect as report of committee for purposes of 15 & 16 Vict. c. 57.—Expenses of commission of inquiry.*

15. <sup>15</sup> If the judge states in his report on the trial of an election petition under this Act that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county or borough at the election to which the petition relates, such statement shall for all the purposes of the Election Commissioners Act, 1852, have the same effect and may be dealt with in the same manner as if it were a report of a committee of the House of Commons appointed to try an election petition; and the expenses of any commission of inquiry which may be issued in accordance with the provisions of the said Act shall be defrayed as if they were expenses incurred in the registration of voters for such county or borough.<sup>16</sup>

*Evidence of corrupt practices, how received.*

17. On the trial of an election petition under this Act, unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.<sup>17</sup>

*Acceptance of office not to stop petition.*

18. The trial of an election petition under this Act shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the Crown.

*Prorogation of Parliament not to stop petition.*

19. The trial of an election petition under this Act shall be proceeded with notwithstanding the prorogation of Parliament.

*Proceedings.—Form of petition.*

20. An election petition under this Act shall be in such form and state such matters as may be prescribed.

*Service of petition.*

21. An election petition under this Act shall be served as nearly as may be in the manner in which a writ or summons is served, or in such other manner as may be prescribed.

*Joint respondents to petition.*

22. Two or more candidates may be made respondents to the same petition, and their case may for the sake of convenience be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent.

*Provision in cases where more petitions than one are presented in relation to the same election.*

23. Where, under this Act, more petitions than one are presented relating to the same election or return, all such petitions shall in the

<sup>15</sup> Extended to illegal practices : 46 & 47 Vict. c. 51, s. 12.

<sup>16</sup> See p. 234, *supra*.

<sup>17</sup> See pp. 90, 230, *supra*.

election list be bracketed together, and shall be dealt with as one petition, but such petitions shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the court shall otherwise direct.

*Shorthand writer of House to attend trial of election petition, and take down evidence, which shall accompany judge's certificate.*

24. On the trial of an election petition under this Act the shorthand writer of the House of Commons or his deputy shall attend, and shall be sworn by the judge faithfully and truly to take down the evidence given at the trial, and from time to time as occasion requires to write or cause the same to be written in words at length; and it shall be the duty of such shorthand writer to take down such evidence, and from time to time to write or cause the same to be written at length, and a copy of such evidence shall accompany the certificate made by the judge to the Speaker; and the expenses of the shorthand writer shall be deemed to be part of the expenses incurred in receiving the judge.

*Jurisdiction and rules of court.—Rules of court to be made.—Rules to be laid before Parliament.*

25. The judges for the time being on the rota for the trial of election petitions in England and Ireland may respectively from time to time make, and may from time to time revoke and alter, general rules and orders (in this Act referred to as the rules of court), for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of election petitions, and the trial thereof, and the certifying and reporting thereon.

Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Any general rules and orders made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

*Principles and practice of committees of House of Commons to be observed, subject to rules.*

26. Until rules of court have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this Act.

*Duties of prescribed officer to be performed by Master of Common Pleas.—His remuneration.*

27. The duties to be performed by the prescribed officer under this Act shall be performed by such one or more of the Masters of the Court of Common Pleas at Westminster as may be determined by the Chief Justice of the said Court of Common Pleas, and by the Master of the Court of Common Pleas at Dublin; and there shall be awarded to such Masters respectively, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this Act as the Chief Justices of the said Courts of Common Pleas at Westminster and Dublin may respectively, with the consent of the Treasury, determine.

*Reception, expenses, and jurisdiction of judge.—Reception of judge.*

28. The judge shall be received at the place where he is about to try an election petition under this Act with the same state, so far as circum-



stances admit, as a judge of assize is received at an assize town; he shall be received by the sheriff in the case of a petition relating to a county election, and in any other case by the mayor, in the case of a borough having a mayor, and in the case of a borough not having a mayor, by the sheriff of the county in which the borough is situate, or by some person named by such sheriff.

*Expenses.*

The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff or by such mayor or person named as aforesaid in receiving the judge and providing him with necessary accommodation and with a proper court, shall be defrayed by the Treasury out of money to be provided by Parliament.<sup>18</sup>

*Powers of judge.—Court to be court of record.*

29. On the trial of an election petition under this Act the judge shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority as a judge of one of the superior courts and as a judge of assize and Nisi Prius, and the court held by him shall be a court of record.<sup>19</sup>

*Attendance on judge.*

30. The judge shall be attended on the trial of an election petition under this Act in the same manner as if he were a judge sitting at Nisi Prius, and the expenses of such attendance shall be deemed to be part of the expenses of providing a court.<sup>18</sup>

*Witnesses.—Summons of witnesses, and penalties for perjury.*

31. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial at Nisi Prius, and shall be subject to the same penalties for perjury.<sup>18</sup>

*Judge may summon and examine witnesses.*

32. On the trial of an election petition under this Act the judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The judge may examine any witness so compelled to attend, or any person in court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.<sup>20</sup>

*Expenses of witnesses.*

34. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate under the hand of the judge or of the prescribed officer; and such expenses, if the witness was called and examined by the judge, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition.

<sup>18</sup> See p. 210, *supra*.

<sup>19</sup> See p. 224, *supra*.

<sup>20</sup> See pp. 210, 228, 229, *supra*. An

order hereunder was issued in *Exeter* (1911).

*Withdrawal and abatement of election petitions.—Withdrawal of petition, and substitution of new petitioners.*

35. An election petition under this Act shall not be withdrawn without the leave of the court or judge upon special application, to be made in and at the prescribed manner, time, and place.<sup>21</sup>

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the county or borough to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The court or judge may, if it or he think fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the court or judge induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities, as the original petitioner.

If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.<sup>22</sup>

*Abatement of petition, and substitution of new petitioner.*

37. An election petition under this Act shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge, in and at the prescribed manner, time, and place, to be substituted as a petitioner.

The court or judge may, if it or he think fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition.<sup>23</sup>

*Admission in certain cases of voters to be respondents.*

38. If before the trial of any election petition under this Act any of the following events happen in the case of the respondent; (that is to say,)

(1) If he dies:

<sup>21</sup> In *Denbigh Boroughs* (1910) application to withdraw was made to the judges whilst they were trying the *East*

*Dorset* case at Dorchester.

<sup>22</sup> See p. 207, *supra*.

<sup>23</sup> See p. 209, *supra*.

- (2) If he is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain :
- (3) If the House of Commons has resolved that his seat is vacant :
- (4) If he gives in and at the prescribed manner and time notice to the court that he does not intend to oppose the petition :

Notice of such event having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent ; and any number of persons not exceeding three may be so admitted.

*Respondent not opposing not to appear as party, nor sit or vote until report made to House.*

39. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Commons until the House of Commons has been informed of the report on the petition ; and the court or judge shall in all cases in which such notice has been given in the prescribed time and manner report the same to the Speaker of the House of Commons.

*Provision for case of double return, where the member complained of declines to defend his return.*

40. Where an election petition under this Act complains of a double return, and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this Act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer ; and upon the receipt of such notice the prescribed officer shall report the fact of the withdrawal of such petition to the Speaker, and the House of Commons shall thereupon give the necessary directions for amending the said double return by taking off the file the indenture by which the respondent so declining to oppose the petition was returned, or otherwise as the case may require : . . .

*Costs.—General costs of petition.—Taxation and recovery of costs.*

41. All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon with the exception of such costs, charges and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the court or judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

The costs may be taxed in the prescribed manner, . . . and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.<sup>24</sup>

<sup>24</sup> See p. 210, *supra*.



*Recognizance, when to be estreated, &c.*

42. If any petitioner in an election petition presented under this Act neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be within one year after such demand proved to the satisfaction of the court of elections, in every such case every person who has entered into a recognizance relating to such petition under the provisions of this Act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in England in manner provided by the Levy of Fines Act, 1822, and in Ireland in manner provided by the Fines Act (Ireland), 1851.

*Punishment of corrupt practices.—Avoidance of election of candidate proved to have knowingly employed an agent previously found or reported guilty of corrupt practices.*

44. If on the trial of any election petition under this Act any candidate is proved to have personally engaged at the election to which such petition relates, as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a committee of the House of Commons, or by the report of the judge upon an election petition under this Act, or by the Report of commissioners appointed in pursuance of the Election Commissioners Act, 1852, the election of such candidates shall be void.

*Miscellaneous.—Action against returning officer for neglecting to return person found to have been duly elected.*

48. If any returning officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in Parliament for any county or borough, such person may, in case it has been determined on the hearing of an election petition under this Act that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected, or refused duly to make such return at his election in any of Her Majesty's Courts of Record at Westminster, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit; provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election.<sup>25</sup>

*Reckoning of time.*

49. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded.

*Other modes of questioning elections barred.*

50. No election or return to Parliament shall be questioned except in accordance with the provisions of this Act, . . .

*Returning officer, if complained of, to be respondent.*

51. Where an election petition under this Act complains of the conduct of a returning officer, such returning officer shall for all the purposes of

<sup>25</sup> See p. 14, *supra*; and see now the Public Authorities Protection Act, 1893, ss. 1, 2.

this Act, except the admission of respondents in his place, be deemed to be a respondent.

*Petition complaining of no return.*

52. A petition under this Act complaining of no return may be presented to the court, and shall be deemed to be an election petition within the meaning of this Act; and the court may make such order thereon as they think expedient for compelling a return to be made, or may allow such petition to be heard by the judge in manner herein-before provided with respect to ordinary election petitions.

*Recrimination when petition complains of undue return, and claims seat.*

53. On the trial of a petition under this Act complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.<sup>26</sup>

*Commission of inquiry into corrupt practices, on address by Parliament, presented petition of electors.*

56.<sup>27</sup> If upon a petition to the House of Commons, presented within twenty-one days after the return to the Clerk of the Crown in Chancery in England, or to the Clerk of the Crown and Hanaper in Ireland, of a member to serve in Parliament for any borough or county, or within fourteen days after the meeting of Parliament, and signed by any two or more electors of such borough or county, and alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both Houses of Parliament, praying that such allegation may be inquired into, the Crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the Election Commissioners Act, 1852.<sup>28</sup>

57. Any person who at the time of the passing of this Act was entitled to practise as agent, according to the principles, practice, and rules of the House of Commons, in cases of election petitions and matters relating to election of members of the House of Commons, shall be entitled to practise as an attorney or agent in cases of election petitions and all matters relating to elections before the court and judges prescribed by this Act: provided that every such person so practising as aforesaid shall, in respect of such practice and everything relating thereto, be subject to the jurisdiction and orders of the court as if he were an attorney of the said court: and further, provided that no such person shall practise as aforesaid, until his name shall have been entered on a roll to be made and kept, and which is hereby authorized to be made and kept, by the prescribed officer in a prescribed manner.

<sup>26</sup> See p. 222, *supra*.

<sup>27</sup> Extended to illegal practices: 46 &

47 Vict. c. 51, s. 12.

<sup>28</sup> See p. 234, *supra*.

## PENSIONERS CIVIL DISABILITIES RELIEF ACT, 1869.

32 &amp; 33 VICT. c. 15.

An Act to remove doubts as to the qualification of persons holding Civil Service Pensions, or receiving Superannuation Allowances, to sit in Parliament. [24th June 1869.]

*Pensions not to disqualify holders from sitting in Parliament.*

1. Pensions, compensations, or allowances, granted for civil services according to the provisions of the Superannuation Act, 1834, and the Superannuation Act, 1859, or any other Act or Acts whatever, shall not disqualify the holder from being elected or sitting or voting as a Member of the House of Commons.

## DIPLOMATIC SALARIES, &amp;C., ACT, 1869.

32 &amp; 33 VICT. c. 43.

An Act to provide for the payment of Diplomatic Salaries, Allowances, and Pensions. [2nd August 1869.]

*Pensioner may sit in House of Commons.*

17. A pension under this Act shall not disqualify the holder for being elected or sitting or voting as a Member of the House of Commons.

## FORFEITURE ACT, 1870.

33 &amp; 34 VICT. c. 23.

An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto. [4th July 1870.]

*Conviction for treason or felony to be a disqualification for offices, &c.*

2. . . . Any person hereafter convicted of treason or felony, for which he shall be sentenced to death, or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months . . . shall become, and (until he shall have suffered the punishment to which he had been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon from Her Majesty), shall continue thenceforth incapable of . . . being elected, or sitting, or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland.<sup>29</sup>

<sup>29</sup> See pp. 2, 47, *supra*.



## BALLOT ACT, 1872.

35 & 36 VICT. C. 33.<sup>30</sup>

An Act to amend the Law relating to Procedure at Parliamentary and  
Municipal Elections. [18th July 1872.]

[*Preamble.*]

## PART I.—PARLIAMENTARY ELECTIONS.

*Procedure at elections.—Nomination of candidates for parliamentary elections.*

1. A candidate for election to serve in Parliament for a county or borough shall be nominated in writing. The writing shall be subscribed by two registered electors of such county or borough as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and shall be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder.

If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer shall forthwith declare the candidates who may stand nominated to be elected, and return their names to the Clerk of the Crown in Chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer shall adjourn the election and shall take a poll in manner in this Act mentioned.

A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer: Provided that the proposer of a candidate nominated in his absence out of the United Kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate.

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.<sup>1</sup>

*Poll at elections.*

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this

<sup>30</sup> See pp. 17, 22\*, 23, 26, 30, 31,  
seq., *supra*.

<sup>1</sup> See pp. 17 seq., *supra*.

Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.<sup>2</sup>

*Offences at elections.—Offences in respect of nomination papers, ballot papers, and ballot boxes.*

**3. Every person who,—**

- (1) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or
- (2) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (3) Without due authority supplies any ballot paper to any person; or
- (4) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
- (5) Fraudulently takes out of the polling station any ballot paper; or
- (6) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election<sup>3</sup>;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.<sup>4</sup>

<sup>2</sup> See pp. 23 *seq.* *supra*.

<sup>3</sup> In *Rex v. Chapin and Neilan* (1909), 74 J. P. 71; *Times*, Nov. 25, where two women were indicted in respect of

throwing liquid over ballot papers, the accused were convicted of interfering with the ballot boxes.

<sup>4</sup> See pp. 44, 61, *supra*.

*Infringement of secrecy.*

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.<sup>5</sup>

*Use of school and public room for poll.*

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.<sup>6</sup>

*Conclusiveness of register of voters.*

7. At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote: Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting.<sup>7</sup>

*Duties of returning and election officers.—General powers and duties of returning officer.*

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot

<sup>5</sup> See p. 45, *supra*.

<sup>6</sup> See p. 24, *supra*.

<sup>7</sup> See pp. 47 *seq.*, 225, *supra*.



papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

Where the sheriff is returning officer for more than one county as defined for the purposes of parliamentary elections, he may, without prejudice to any other power, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to an election in any such county, and may, by himself or such deputy, exercise any powers and do any things which the returning officer is authorised or required to exercise or do in relation to such election. Every such deputy, and also any under sheriff, shall, in so far as he acts as returning officer, be deemed to be included in the term returning officer in the provisions of this Act relating to parliamentary elections, and the enactments with which this part of this Act is to be construed as one.<sup>8</sup>

#### *Keeping of order in station.*

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector, who is otherwise entitled to vote at any polling station, from having an opportunity of voting at such station.<sup>9</sup>

#### *Powers of presiding officer and administration of oaths, &c.*

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.<sup>10</sup>

#### *Liability of officers for misconduct.*

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding one hundred pounds.

Section fifty of the Representation of the People Act, 1867, (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate,) shall apply to any returning officer, or officer appointed by him in pursuance of this Act, and to his partner or clerk.<sup>11</sup>

<sup>8</sup> This paragraph is repealed except as respects Scotland and Ireland by R. P. Act, 1918, s. 47 (1) and 8th Sch.

<sup>9</sup> See pp. 28, 31, *supra*.

<sup>10</sup> See pp. 31, 32, 51, *supra*.

<sup>11</sup> See pp. 32, 55, *supra*.

*Miscellaneous.—Prohibition of disclosure of vote.*

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.<sup>12</sup>

*Non-compliance with rules.*

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.<sup>13</sup>

*Use of municipal ballot boxes, &c., for parliamentary election, and vice versâ.*

14.<sup>14</sup> Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.<sup>15</sup>

*Construction.*

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of the persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.<sup>16</sup>

## PART III.—PERSONATION.

*Definition and punishment of personation.*

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election,

<sup>12</sup> See p. 229, *supra*.

<sup>13</sup> See p. 66, *supra*.

<sup>14</sup> Amended as to England and Ireland: 38 & 39 Vict. c. 84, s. 6; and as

to Scotland: 41 & 42 Vict. c. 41, s. 4.

<sup>15</sup> See p. 26, *supra*.

<sup>16</sup> See p. 30, *supra*.

applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

. . . It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.<sup>17</sup>

\* \* \* \* \*

*Vote to be struck off for bribery, treating, or undue influence.*

25. Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence, in respect of any person who voted at such election, . . . there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to such candidate one vote for every person who voted at such election and is proved to have been so bribed, treated, or unduly influenced, . . .

*Alterations in Act as applying to Scotland.*

26. This part of this Act shall apply to Scotland, subject to the following provisions:—

The offence of personation shall be deemed to be a crime and offence, and the rules of the law of Scotland, with respect to apprehension, detention, precognition, commitment, and bail shall apply thereto, and any person accused thereof may be brought to trial in the court of justiciary, whether in Edinburgh or on circuit, at the instance of the Lord Advocate, or before the sheriff court, at the instance of the procurator fiscal.

*Construction of part of Act.*

27. This part of this Act, so far as regards parliamentary elections, shall be construed as one with the Parliamentary Elections Act, 1868, and shall apply to an election for a university or combination of universities.

#### PART IV.—MISCELLANEOUS.

*Effect of schedules.*

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.<sup>18</sup>

*Saving.*

31. Nothing in this Act, except Part III. thereof, shall apply to any election for a university or combination of universities.

*Short title.*

33. This Act may be cited as "The Ballot Act, 1872," . . .

<sup>17</sup> See pp. 31, 136, *supra*.

<sup>18</sup> See p. 36, *supra*.



## SCHEDULES.

## FIRST SCHEDULE.

PART I.—RULES FOR PARLIAMENTARY ELECTIONS.<sup>20</sup>*Election.*

1. The returning officer shall, in the case of a county election within two days after the day on which he receives the writ, and in the case of a borough election on the day on which he receives the writ or the following day, give public notice, between the hours of nine in the morning and four in the afternoon, of the day on which and the place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election shall send one of such notices by post, under cover, to the postmaster of the principal post office of each polling place in the county, endorsed with the words "Notice of election," and the same shall be forwarded free of charge; and the postmaster receiving the same shall forthwith publish the same in the manner in which post office notices are usually published.<sup>21</sup>

2. The day of election shall be fixed by the returning officer as follows; that is to say, in the case of an election for a county or a district borough not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in the case of an election for any borough other than a district borough not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election.<sup>21</sup>

2A. *In an election of members to serve in a new Parliament of the United Kingdom the day fixed by the returning officer for the election*<sup>22</sup> *shall in all cases be the eighth day after the date of His Majesty's gracious Proclamation declaring the calling of the Parliament.*<sup>23</sup>

4. The time appointed for the election shall be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer shall attend during those two hours and for one hour after.<sup>21</sup>

5. Each candidate shall be nominated by a separate nomination paper, but the same electors or any of them may subscribe as many nomination papers as there are vacancies to be filled, but no more.<sup>24</sup>

6. Each candidate shall be described in the nomination paper in such manner as in the opinion of the returning officer is calculated to sufficiently identify such candidate; the description shall include his names, his abode, and his rank, profession or calling, and his surname shall come first in the list of his names. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule shall be allowed or deemed valid, unless such objection is made by the returning officer, or by some other person, at or immediately after the time of the delivery of the nomination paper.<sup>25</sup>

7. The returning officer shall supply a form of nomination paper to any registered elector requiring the same during such two hours as the

<sup>20</sup> See pp. 26, 36, 65, *supra*.

<sup>21</sup> See p. 15, *supra*.

<sup>22</sup> *I.e.*, where the election is contested the day of nomination.

<sup>23</sup> This rule is inserted by virtue of

s. 21 (1) and Second Schedule, Part I. of the R. P. Act, 1918.

<sup>24</sup> See p. 18, *supra*.

<sup>25</sup> See p. 18, *supra*.

returning officer may fix, between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of the election was given and the day of election, and during the time appointed for the election; but nothing in this Act shall render obligatory the use of a nomination paper supplied by the returning officer, so, however, that the paper be in the form prescribed by this Act.<sup>25</sup>

8. The nomination papers shall be delivered to the returning officer at the place of election during the time appointed for the election; and the candidate nominated by each nomination paper, and his proposer and seconder, and one other person selected by the candidate, and no person other than aforesaid, shall, except for the purpose of assisting the returning officer, be entitled to attend the proceedings during the time appointed for the election.<sup>25</sup>

9. If the election is contested the returning officer shall, as soon as practicable after adjourning the election, give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers, and of the names of the persons who subscribe the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and in the case of an election for a county deliver to the postmaster of the principal post office of the town in which is situate the place of election a paper, signed by himself, containing the names of the candidates nominated, and stating the day on which the poll is to be taken, and the postmaster shall forward the information contained in such paper by telegraph, free of charge, to the several postal telegraph offices situate in the county for which the election is to be held, and such information shall be published forthwith at each such office in the manner in which post office notices are usually published.<sup>26</sup>

10. If any candidate nominated during the time appointed for the election is withdrawn in pursuance of this Act, the returning officer shall give public notice of the name of such candidate, and the names of the persons who subscribed the nomination paper of such candidate, as well as of the candidates who stood nominated or were elected.<sup>27</sup>

11. The returning officer shall, on the nomination paper being delivered to him, forthwith publish notice of the name of the person nominated as a candidate, and of the names of his proposer and seconder, by placarding or causing to be placarded the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room is situate appointed for the election.<sup>28</sup>

12. A person shall not be entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in manner provided by this Act, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election shall be deemed to have been nominated in manner provided by this Act, unless objection be made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election or within one hour afterwards.<sup>29</sup>

13. The returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but if allowing the same, shall be subject to reversal on petition questioning the election or return.<sup>29</sup>

#### *The Poll.*

14. In the case of a bye-election the poll shall take place on such day as the returning officer may appoint, not being less than six or more than eight clear days after the day fixed for nomination.<sup>30</sup>

<sup>26</sup> See p. 17, *supra*.

<sup>27</sup> See p. 22, *supra*.

<sup>28</sup> See p. 19, *supra*.

<sup>29</sup> See p. 19, *supra*.

<sup>30</sup> Rule 14 is here printed with the modifications introduced by s. 21 (1) of the R. P. Act, 1918, and s. 3 of the R. P. (No. 2) Act, 1920.



14A. *In an election of members to serve in a new Parliament of the United Kingdom, the day appointed by the returning officer for the poll shall in all cases be the ninth day after the day fixed for the election.*<sup>1</sup>

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.<sup>2</sup>

16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.<sup>2</sup>

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.<sup>2</sup>

18. No person shall be admitted to vote at any polling station except the one allotted to him.<sup>2</sup>

19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.<sup>2</sup>

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.<sup>3</sup>

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.<sup>4</sup>

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.<sup>5</sup>

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.<sup>5</sup>

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a

<sup>1</sup> See s. 21 (1) and Second Schedule, Part I., of R. P. Act, 1918, "Day fixed for election" means day of nomination.

<sup>2</sup> See pp. 17, 24, 25, *supra*.

<sup>3</sup> See pp. 26, 27, *supra*.

<sup>4</sup> See p. 28, *supra*.

<sup>5</sup> See p. 26, *supra*.



ballot paper, but without showing the particular ballot paper which he has received.<sup>6</sup>

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.<sup>7</sup>

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."<sup>8</sup>

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form herein-after mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.<sup>9</sup>

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter; but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.<sup>10</sup>

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.<sup>10</sup>

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

- (1) Each ballot box in use at his station, unopened but with the key attached; and
- (2) The unused and spoilt ballot papers, placed together; and
- (3) The tendered ballot papers; and
- (4) The marked copies of the register of voters, and the counterfoils of the ballot papers; and
- (5) The tendered votes list, and the list of votes marked by the presiding

<sup>6</sup> See pp. 27, 28, *supra*;

<sup>7</sup> See p. 28, *supra*.

<sup>8</sup> See p. 29, *supra*.

<sup>9</sup> See pp. 17, 26, 29, 52, 225—6.

<sup>10</sup> See p. 29, *supra*.

officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer.<sup>11</sup>

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.<sup>11</sup>

### *Counting Votes.*

31. The candidates may respectively appoint agents to attend the counting of the votes.<sup>12</sup>

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.<sup>13</sup>

33. The returning officer, his assistants and clerks, and the agents of candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.<sup>14</sup>

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the back of such papers.<sup>15</sup>

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.<sup>16</sup>

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of,—

(1) Want of official mark;

(2) Voting for more candidates than entitled to;

(3) Writing or mark by which voter could be identified;

(4) Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.<sup>17</sup>

37. Upon the completion of the counting the returning officer shall seal up in separate packets the counted and the rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy

<sup>11</sup> See p. 32, *supra*.

<sup>12</sup> See p. 33, *supra*.

<sup>13</sup> See p. 33, *supra*.

<sup>14</sup> See pp. 28, 33, *supra*.

<sup>15</sup> See p. 33, *supra*.

<sup>16</sup> See p. 33, *supra*.

<sup>17</sup> See pp. 34, 226, *supra*.



of the register of voters and counterfoils, but shall proceed in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.<sup>18</sup>

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.<sup>19</sup>

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's Superior Courts, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons, or under the order of one of Her Majesty's Superior Courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.<sup>20</sup>

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection, as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.<sup>20</sup>

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

<sup>18</sup> See p. 43, *supra*.

<sup>19</sup> See p. 43, *supra*.

<sup>20</sup> See p. 221, *supra*.



43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

#### *General Provisions.*

44. The return of a member or members elected to serve in Parliament for any county or borough shall be made by a certificate of the names of such member or members under the hand of the returning officer endorsed on the writ of election for such county or borough, and such certificate shall have effect and be dealt with in like manner as the return under the existing law, and the returning officer may, if he think fit, deliver the writ with such certificate endorsed to the postmaster of the principal office of the place of election, or his deputy, and in that case he shall take a receipt from the postmaster or his deputy for the same; and such postmaster or his deputy shall then forward the same by the first post, free of charge, under cover, to the Clerk of the Crown with the words "Election Writ and Return" endorsed thereon.<sup>21</sup>

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, the total number of votes given for each candidate, whether elected or not.<sup>22</sup>

46. Where the returning officer is required or authorised by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.<sup>23</sup>

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.<sup>24</sup>

49. No person shall be appointed by a returning officer for the purpose of an election who has been employed by any other person in or about the election.<sup>25</sup>

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station, except ordering the arrest, exclusion, or ejection from the polling station of any person.<sup>25</sup>

51. A candidate may himself undertake the duties which any agent of

<sup>21</sup> See p. 13, *supra*.

<sup>22</sup> See p. 43, *supra*.

<sup>23</sup> See p. 28, *supra*.

<sup>24</sup> See pp. 28, 33, *supra*.

<sup>25</sup> See p. 32, *supra*.

his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purpose of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.<sup>27</sup>

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, or at the counting of the votes shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration, or take any oath on the occasion of any election.<sup>28</sup>

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above-mentioned.<sup>29</sup>

57. In this Act—

The expression “district borough” means the borough of Monmouth and any of the boroughs specified in Schedule E. to the Representation of the People Act, 1832; and

The expression “polling place” means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorised by law to be provided; and

The expression “agents of the candidates,” used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Parliamentary Voters Registration Act, 1843.

<sup>27</sup> See pp. 34, 59, *supra*.

<sup>28</sup> See pp. 32, 45, *supra*.

<sup>29</sup> Bank Holidays are treated like any other day and are not excluded in com-

puting time—Bank Holiday Acts (34 & 35 Vict. c. 17; 38 & 39 Vict. c. 13). See *Forsdike v. Colquhoun*, 11 Q. B. D. 71.



*Modifications in Application of Part One of Schedule to Scotland.*

59. In Scotland, the candidates may respectively appoint agents to attend at the polling stations. The ballot papers and other documents, other than the return required to be sent to and kept by the Clerk of the Crown in Chancery, shall, in Scotland, be kept by the sheriff clerks of the respective counties in which the returns (including those for burghs) are made, and the provisions of this schedule relating thereto shall be construed as if the sheriff clerk were substituted for Clerk of the Crown in Chancery.<sup>30</sup>

60. In Scotland, the term "district borough" shall mean the combined burghs and towns specified in Schedule E. of the Representation of the People (Scotland) Act, 1832, and in Schedule A. of the Representation of the People (Scotland) Act, 1868.<sup>1</sup>

61. The provisions of the Representation of the People (Scotland) Act, 1832, in so far as they relate to the fixing and announcement of the day of election, the interval to elapse between the receipt of the writ and the day of election, the period of adjournment for taking the poll in the case of Orkney and Shetland, and of the district of burghs comprising Kirkwall, Wick, Dornoch, Dingwall, Tain, and Cromarty, and to the keeping open of the poll for two consecutive days in the case of Orkney and Shetland, shall remain in full force and effect, anything in this Act or any other Act of Parliament now in force notwithstanding; but nothing herein contained shall be construed to exclude Orkney and Shetland or Orkney or Shetland, or the said district of burghs, or any of the burghs in the said district, from any of the benefits and obligations of the other portions of this Act.<sup>2</sup>

*Modifications in Application of Part One of Schedule to Ireland.*

62. The expression "Clerk of the Crown in Chancery" in this schedule shall mean, as regards Ireland, "The Clerk of the Crown and Hanaper in Ireland."

63. A presiding officer at a polling station in a county in Ireland need not be a freeholder of the county.

SECOND SCHEDULE.<sup>3</sup>

*Note.*—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

*Writ for a County or Borough at a Parliamentary Election.*

<sup>4</sup> Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the <sup>5</sup> of the county [or borough] of , greeting:

<sup>6</sup> Whereas by the advice of our Council we have ordered a Parliament to be holden at Westminster on the day of next. We command you that notice of the time and place of election being first duly given, you do cause election to be made according to law of members [or a member] to serve in Parliament for the said county [or the

<sup>30</sup> See p. 43, *supra*.

<sup>1</sup> By rule 8 of the Sixth Schedule to the R. P. Act, 1918, for the reference to the Schedules in the above rule 60, a reference to Division (4) of Part I. of the Ninth Schedule to that Act is to be substituted.

<sup>2</sup> See p. 16, *supra*.

<sup>3</sup> See pp. 27, 35, 66, *supra*.

<sup>4</sup> The name of the Sovereign may be altered when necessary.

<sup>5</sup> Insert "sheriff" or other returning officer.

<sup>6</sup> This preamble to be omitted except in case of a general election.



division of the said county, or the borough, or as the case may be] of  
 7 and that you do cause the names of such members [or member]  
 when so elected, whether they [or he] be present or absent, to be certified  
 to us, in our Chancery, without delay.

Witness ourself at Westminster, the                      day of                      in the  
year of our reign, and in the year of our Lord 18                      .

## Label or direction of Writ.

To the                    3 of

A writ of a new election of members [or member] for the said county [or division of a county or borough, or as the case may be].

*Endorsement.*

Received the within writ on the                  day of                  18 .  
     (Signed)      A.B.,  
 High Sheriff [or Sheriff, or Mayor, or as the case may be].

*Certificate endorsed on the Writ.*

I hereby certify, that the members [or member] elected for \_\_\_\_\_ in  
pursuance of the within-written writ, are [or is] A.B. of \_\_\_\_\_, in the  
county of \_\_\_\_\_ and C.D. of \_\_\_\_\_, in the county of \_\_\_\_\_.

(Signed) A.B.,  
High Sheriff [or Sheriff, or Mayor, or as the case may be].

*Note.*—A separate writ will be issued for each county as defined for the purposes of a parliamentary election.

*Form of Notice of Parliamentary Election.*

The returning officer of the                      of                      will, on the                      day of                      now next ensuing, between the hours of                      and                      , proceed to the nomination, and, if there is no opposition, to the election, of a member [or members] for the said county [or division of a county or borough] at the<sup>9</sup>

Forms of nomination paper may be obtained at \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_ on \_\_\_\_\_.

Every nomination paper must be signed by two registered electors as proposer and seconder, and by eight other registered electors as assenting to the nomination.

Every nomination paper must be delivered to the returning officer by the candidate proposed, or by his proposer and seconder, between the said hours of      and      on the said      day of      at the said      .<sup>9</sup>

Each candidate nominated, and his proposer and seconder, and one other person selected by the candidate, and no other persons, are entitled to be admitted to the room.

**7** Except in a general election, insert here in the name of A.B., deceased, or otherwise stating the cause of vacancy.

<sup>8</sup> Insert "sheriff" or other returning

officer.

<sup>9</sup> *Note.*—Insert description of place and room.

In the event of the election being contested, the poll will take place on the      day of      .

(Signed)      A.B.,  
 Sheriff [or Mayor, or as the case may be].  
 day of      18      .

Take notice, that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices, [<sup>10</sup> or any illegal practice] at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the Corrupt Practices Prevention Act, 1854,<sup>11</sup> and the Ballot Act, 1872, and the Acts amending the said Acts.

*Form of Nomination Paper in Parliamentary Election.*

We, the undersigned A.B. of      in the      of      and C.D. of      in the      of      , being electors for the      of      , do hereby nominate the following person as a proper person to serve as member for the said in Parliament:—

Surname.	Other Names.	Abode.	Rank, Profession, or Occupation.
BROWN . . .	JOHN . . . .	52, George St., Bristol.	Merchant.
JONES . . .	<i>or</i> WILLIAM DAVID .	High Elms, Wilts .	Esquire.
MERTON . .	<i>or</i> HON. GEORGE TRAVIS, commonly called Viscount.	Swanworth, Berks .	Viscount.
SMITH . . .	<i>or</i> HENRY SYDNEY .	72, High St., Bath .	Attorney.

(Signed)      A.B.  
                          C.D.

We, the undersigned, being registered electors of the      , do hereby assent to the nomination of the above-mentioned John Brown as a proper person to serve as member for the said      in Parliament.

(Signed)      E.F. of  
                          G.H. of  
                          I.J. of  
                          K.L. of  
                          M.N. of  
                          O.P. of  
                          Q.R. of  
                          S.T. of

*Note.*—Where a candidate is an Irish peer, or is commonly known by some title, he may be described by his title as if it were his surname.

<sup>10</sup> Words in brackets inserted by 46 & 47 Vict. c. 51, s. 62.

<sup>11</sup> By 46 & 47 Vict. c. 51, s. 62, the

words "The Corrupt and Illegal Practices Prevention Act, 1883," are to be here inserted.

*Form of Ballot Paper.**Form of Front of Ballot Paper.*

Counterfoil No.	1	BROWN (John Brown, of 32, George St., Bristol, merchant.)	
	2	JONES (William David Jones, of High Elms, Wilts, esquire.)	
	3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
	4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	

## NOTE:

*The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*

*Form of Back of Ballot Paper.*

No.

Election for county [or borough, or ward].

18

*Note.*—The number on the ballot paper is to correspond with that in the counterfoil.

*Directions as to Printing Ballot Paper.*

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

*Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.*

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.



If the voter votes for more than            candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months with or without hard labour.

*Note.*—These directions shall be illustrated by examples of the ballot paper.

#### *Form of Statutory Declaration of Secrecy.*

I solemnly promise and declare, that I will not at this election for    do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

*Note.*—This section must be read to the declarant by the person taking the declaration.

#### *Form of Declaration of inability to read.*

I, A.B., of           , being numbered            on the Register of Voters for the county [*or borough*] of           , do hereby declare that I am unable to read.

A.B.,            his mark.

day of           .

I, the undersigned, being the presiding officer for the            polling station for the county [*or borough*] of           , do hereby certify, that the above declaration, having been first read to the above-named A.B., was signed by him in my presence with his mark.

Signed, C.D.,

Presiding officer for            polling station  
for the county [*or borough*] of           .

day of           .

### THIRD SCHEDULE.

Provisions of Registration Acts referred to in Part III. of the foregoing Act (sect. 24).

Session and Chapter.	Title.	Part applied.
AS TO ENGLAND.		
6 & 7 Vict. c. 18.	The Parliamentary Voters Registration Act, 1843.	Sections eighty-five to eighty-nine, both inclusive.

#### NAVAL ARTILLERY VOLUNTEER ACT, 1873.

36 & 37 VICT. c. 77.

An Act to provide for the Establishment of a Royal Naval Artillery Volunteer Force. [5th August 1873.]

*As to members of House of Commons accepting commissions.*

6. The acceptance of a commission in the naval artillery volunteer force by a member of the Commons House of Parliament shall not render his seat vacant.

SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 VICT. c. 77.

An Act to amend and extend the Supreme Court of Judicature Act, 1873.  
[11th August 1875.]

5. . . . No Judge of either of the said courts [the High Court of Justice, and the Court of Appeal] shall be capable of being elected to or of sitting in the House of Commons.<sup>13</sup>

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PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875.

38 & 39 VICT. c. 84.

An Act to regulate the Expenses and to control the Charges of Returning Officers at Parliamentary Elections.<sup>14</sup> [13th August 1875.]

*Construction of Act with 35 & 36 Vict. c. 33.*

1. The Ballot Act, 1872, as modified by this Act, and this Act shall be construed as one Act.

This Act shall apply only to parliamentary elections.

*Use of ballot boxes, &c., provided for municipal elections.*

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to the provisions of this section.<sup>15</sup>

*Saving of the Universities.*

8. Nothing in this Act shall apply to an election for any university or combination of universities.

*Short title.*

10. This Act may be cited for all purposes as "The Parliamentary Elections (Returning Officers) Act, 1875."

*Not to apply to Scotland.*

11. This Act shall not apply to Scotland.<sup>16</sup>

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THE PARLIAMENTARY ELECTIONS AND CORRUPT PRACTICES ACT, 1879.

42 & 43 VICT. c. 75.

An Act to amend and continue the Acts relating to Election Petitions, and to the prevention of Corrupt Practices at Parliamentary Elections.  
[15th August 1879.]

*Short Title.*

1. This Act may be cited as the Parliamentary Elections and Corrupt Practices Act, 1879.

<sup>13</sup> See p. 4, *supra*.

<sup>14</sup> This Act, which by s. 9 was of temporary duration, has been continued by the Expiring Laws Continuance Acts.

<sup>15</sup> See p. 26, *supra*.

<sup>16</sup> As to charges of Returning Officers in Scotland, see Returning Officers (Scotland) Act, 1891 (54 & 55 Vict. c. 49).

*Trial of election petition to be conducted before two judges.*

2. The trial of every election petition and the hearing of an application for the withdrawal of an election petition shall be conducted before two judges instead of one, and the Parliamentary Elections Act, 1868, shall be construed as if for the purpose of hearing and determining the petition at the trial and of hearing and determining any application for the withdrawal of an election petition two judges were mentioned, and additional judges shall, if necessary, be placed on the rota accordingly.

Every certificate and every report sent to the Speaker in pursuance of the said Act shall be under the hands of both judges, and if the judges differ as to whether the member whose return or election is complained of was duly returned or elected they shall certify that difference, and the member shall be deemed to be duly elected or returned; and if the judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void; and if the judges differ as to the subject of a report to the Speaker, they shall certify that difference and make no report on the subject on which they so differ.

Save as aforesaid, any order, act, application, or thing for the purposes of the said Act may continue to be made or done by, to, or before one judge. The expenses incident to the sitting of two judges shall be defrayed as the expenses of one judge are payable under the provisions of the said Act.<sup>17</sup>

## ARMY ACT.

44 &amp; 45 VICT. c. 58.

*Officers not to be sheriffs or mayors.*

146. A person who is commissioned and in full pay as an officer in Her Majesty's regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom.

*Modification of Act with respect to auxiliary forces.*

181.—(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.

## SUPREME COURT OF JUDICATURE ACT, 1881.

44 &amp; 45 VICT. c. 68.

*Selection of judges for trial of election petitions.*

13. The judges to be placed on the rota for the trial of election petitions in England in each year, under the provisions of the Parliamentary Elec-

<sup>17</sup> See p. 223, *supra*.



tions Act, 1868, or any Act amending the same, shall thenceforth be selected out of the judges of the Queen's Bench Division of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and, subject thereto, shall be selected as follows; (that is to say,) the judges of the Queen's Bench Division of the said High Court shall, on or before the fourth day of November in every year, select, by a majority of votes, three of the puisne judges of such Division (none of whom shall be a member of the House of Lords) to be placed on the rota for the trial of election petitions during the ensuing year.

If in any case the judges of the said Division, present at the time of their meeting to make such selection, are equally divided in their choice of any judge to be placed on the rota, the Lord Chief Justice of England, or, in case of his absence, the senior judge then present, shall have a second or casting vote.

The choice of a judge to fill any occasional vacancy upon the rota, or to assist the judge on the rota as an additional judge, shall be made in like manner.

The judges, who at the time of the passing of this Act shall be upon the rota for the trial of election petitions, shall continue upon such rota until the end of the year for which they have been appointed, in the same manner as if this Act had not passed.

If at the end of the year for which any such judge shall have been appointed, whether before or after the passing of this Act, any trial or other matter shall be pending before him, either alone or together with any other judge, and not concluded, or if, after the conclusion of any such trial or of the hearing of any such matter, judgment shall not have been given thereon, it shall be lawful for every such judge to proceed with and to conclude such pending trial or other matter, and to give judgment thereon, after the end of such year, in the same manner in all respects as if the year for which he was appointed had not expired.<sup>18</sup>

*Jurisdiction of High Court in registration and election cases.*

14. The jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under the Act of the sixth and seventh years of Her Majesty, chapter eighteen, the County Voters Registration Act, 1865, the Parliamentary Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said Acts, or any Act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

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THE MUNICIPAL CORPORATIONS ACT, 1882.

45 & 46 VICT. C. 50.

PART VIII.—ADMINISTRATION OF JUSTICE.

*Recorder.*

163.—(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.<sup>19</sup>

<sup>18</sup> See p. 223, *supra*.

<sup>19</sup> See p. 4, *supra*.

CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1883.<sup>20</sup>

46 &amp; 47 VICT. c. 51.

An Act for the better prevention of Corrupt and Illegal Practices at Parliamentary Elections. [25th August 1883.]

*Corrupt practices.—What is treating.*

1. Whereas under section four of the Corrupt Practices Prevention Act, 1854, persons other than candidates at Parliamentary elections are not liable to any punishment for treating, and it is expedient to make such persons liable; be it therefore enacted in substitution for the said section four as follows:—

- (1.) Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat drink entertainment or provision to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.<sup>21</sup>
- (2.) And every elector who corruptly accepts or takes any such meat drink entertainment or provision shall also be guilty of treating.<sup>21</sup>

*What is undue influence.*

2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.<sup>22</sup>

*What is corrupt practice.*

3. The expression "corrupt practice" as used in this Act means any of the following offences; namely, treating and undue influence, as defined by this Act, and bribery, and personation, as defined by the enactments set forth in Part III. of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation, and every offence which is a corrupt practice within the meaning of this Act shall be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.<sup>23</sup>

*Punishment of candidate found, on election petition, guilty personally of corrupt practices.*

4. Where upon the trial of an election petition respecting an election for a county or borough the election court, by the report made to the Speaker in pursuance of section eleven of the Parliamentary Elections Act, 1868, reports that any corrupt practice other than treating or undue influence has been proved to have been committed in reference to such election by

<sup>20</sup> See pp. 54, 55, 56, 57, 71, 136, 137, 159, 175, 176, 181, 182, 187, 189, 190, 192, 193, 197, 198, 200, 201, 202, 203, 204, 210, 211, 212, 229, 230, 231,

232, 233, 235, *supra*.

<sup>21</sup> See p. 106, *supra*.

<sup>22</sup> See pp. 123, 129, *supra*.

<sup>23</sup> See pp. 91, 136, 137, *supra*.

or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever being elected to or sitting in the House of Commons for the said county or borough, and if he has been elected, his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted on an indictment of a corrupt practice.<sup>24</sup>

*Punishment of candidate found, on election petition, guilty by agents of corrupt practices.*

5. Upon the trial of an election petition respecting an election for a county or borough, in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the Speaker whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election; and if the report is that any candidate at such election has been guilty by his agents of any corrupt practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for such county or borough for seven years after the date of the report, and if he has been elected his election shall be void.<sup>25</sup>

*Punishment of person convicted on indictment of corrupt practices.*

6.—(1.) A person who commits any corrupt practice other than personation, or aiding, abetting, counselling, or procuring the commission of the offence of personation, shall be guilty of a misdemeanor, and on conviction on indictment shall be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding two hundred pounds.<sup>26</sup>

(2.) A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.<sup>27</sup>

(3.) A person who is convicted on indictment of any corrupt practice shall (in addition to any punishment as above provided) be not capable during a period of seven years from the date of his conviction:

- (a) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office within the meaning of this Act; or
- (b) of holding any public or judicial office within the meaning of this Act, and if he holds any such office the office shall be vacated.<sup>28</sup>

(4.) Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.<sup>29</sup>

*Illegal practices.—Certain expenditure to be illegal practice.*

7.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made—

- (a) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

<sup>24</sup> See pp. 6, 201, *supra*.

<sup>25</sup> See pp. 6, 201, 233, *supra*.

<sup>26</sup> See pp. 107, 200, *supra*.

<sup>27</sup> See pp. 137, 200, *supra*.

<sup>28</sup> See pp. 47, 200, *supra*.

<sup>29</sup> See pp. 6, 200, *supra*.



- (b) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or
  - (c) on account of any committee room in excess of the number allowed by the First Schedule to this Act.<sup>30</sup>
- (2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.<sup>1</sup>
- (3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.<sup>2</sup>

*Expense in excess of maximum to be illegal practice.*

8.—(1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, in excess of any maximum amount in that behalf specified in the first schedule to this Act.

(2.) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.<sup>2</sup>

*Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.*

9.—(1.) If any person votes or induces or procures any person to vote at any election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed by his agent other than his election agent.<sup>3</sup>

*Punishment on conviction of illegal practice.*

10. A person guilty of an illegal practice, whether under the foregoing sections or under the provisions hereinafter contained in this Act, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the county or borough in which the illegal practice has been committed.<sup>4</sup>

*Report of election court respecting illegal practice, and punishment of candidate found guilty by such report.*

11. Whereas by sub-section fourteen of section eleven of the Parlia-

<sup>30</sup> See pp. 146, 147, 188, *supra*.

<sup>1</sup> See pp. 146, 147, *supra*.

<sup>2</sup> See p. 149, *supra*.

<sup>3</sup> See pp. 7, 54, 159, 160, *supra*.

<sup>4</sup> See pp. 54, 202, *supra*, and p. 356, *infra*.

mentary Elections Act, 1868, it is provided that where a charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall report in writing to the Speaker as follows:—

- (a) “Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice;
- (b) “The names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice;
- (c) “Whether corrupt practices have, or whether there is reason to believe corrupt practices have, extensively prevailed at the election to which the petition relates”:

And whereas it is expedient to extend the said sub-section to illegal practices:

Be it therefore enacted as follows:—

Sub-section fourteen of section eleven of the Parliamentary Elections Act, 1868, shall apply as if that sub-section were herein re-enacted with the substitution of illegal practice within the meaning of this Act for corrupt practice; and upon the trial of an election petition respecting an election for a county or borough, the election court shall report in writing to the Speaker the particulars required by the said sub-section as herein re-enacted, and shall also report whether any candidate at such election has been guilty by his agents of any illegal practice within the meaning of this Act in reference to such election, and the following consequences shall ensue upon the report by the election court to the Speaker; (that is to say,)

- (a) If the report is that any illegal practice has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough for seven years next after the date of the report, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice; and
- (b) If the report is that a candidate at such election has been guilty by his agents of any illegal practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough during the Parliament for which the election was held, and if he has been elected, his election shall be void.<sup>5</sup>

*Extension of 15 & 16 Vict. c. 57, respecting election commissioners to illegal practices.*

12. Whereas by the Election Commissioners Act, 1852, as amended by the Parliamentary Elections Act, 1868, it is enacted that where a joint address of both Houses of Parliament represents to Her Majesty that an election court has reported to the Speaker that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed at an election in any county or borough, and prays Her Majesty to cause inquiry under that Act to be made by persons named in such address (being qualified as therein mentioned), it shall be lawful for Her Majesty to appoint the said persons to be election commissioners for the purpose of making inquiry into the existence of such corrupt practices:

And whereas it is expedient to extend the said enactments to the case of illegal practices:

<sup>5</sup> See pp. 6, 54, 202, 233, *supra*.

Be it therefore enacted as follows:—

When election commissioners have been appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same, they may make inquiries and act and report as if “corrupt practices” in the said Act and the enactments amending the same included illegal practices; and the Election Commissioners Act, 1852, shall be construed with such modifications as are necessary for giving effect to this section, and the expression “corrupt practice” in that Act shall have the same meaning as in this Act.

*Illegal payment, employment, and hiring.—Providing of money for illegal practice or payment to be illegal payment.*

13. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment or expenses, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.<sup>6</sup>

*Employment of hackney carriages, or of carriages and horses kept for hire.*

14.—(1.) A person shall not let, lend, or employ, for the purpose of the conveyance of electors to or from the poll, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of an illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal, being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.<sup>7</sup>

*Corrupt withdrawal from a candidature.*

15. Any person who corruptly induces or procures any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing, in pursuance of such inducement or procurement, shall also be guilty of illegal payment.<sup>8</sup>

*Certain expenditure to be illegal payment.*

16.—(1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this

<sup>6</sup> See p. 176, *supra*.

<sup>8</sup> See p. 176, *supra*.

<sup>7</sup> See p. 187, *supra*.



Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.<sup>9</sup>

*Certain employment to be illegal.*

17.—(1.) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to this Act, or except so far as payment is authorised by the first or second parts of the First Schedule to this Act.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed contrary to law.<sup>10</sup>

*Name and address of printer on placards.*

18. Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.<sup>11</sup>

*Saving for creditors.*

19. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense in excess of a certain maximum, shall not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.<sup>12</sup>

*Use of committee room in house for sale of intoxicating liquor or refreshment, or in elementary school, to be illegal hiring.*

20.—(a) Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by a licence (whether the licence be for consumption on or off the premises), or

(b) Any premises where any intoxicating liquor is sold, or is supplied to members of a club, society or association other than a permanent political club, or

(c) Any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises, or

(d) The premises of any public elementary school in receipt of an annual parliamentary grant, or any part of any such premises, shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election, and if any person hires or uses any such premises or any part thereof for a committee room he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring:

<sup>9</sup> See pp. 176, 179, 180, *supra*.

<sup>10</sup> See pp. 182, 183, *supra*.

<sup>11</sup> See p. 186, *supra*.

<sup>12</sup> See pp. 7, 159, *supra*.

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as afore-said.<sup>13</sup>

*Punishment of illegal payment, employment, or hiring.*

21.—(1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.<sup>14</sup>

(2.) A candidate or an election agent of a candidate who is personally guilty of an offence of illegal payment, employment, or hiring shall be guilty of an illegal practice.<sup>15</sup>

*Excuse and exception for corrupt or illegal practice or illegal payment, employment, or hiring.—Report exonerating candidate in certain cases of corrupt and illegal practice by agents.*

22. Where, upon the trial of an election petition respecting an election for a county or borough, the election court report that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

- (a) That no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent; and
  - (b) That such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and
  - (c) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and
  - (d) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;
- then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.<sup>16</sup>

*Power of High Court and election court to except innocent act from being illegal practice, &c.*

23. Where, on application made, it is shown to the High Court or to an election court by such evidence as seems to the court sufficient—

- (a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment, or contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of otherwise being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring<sup>17</sup>; and
- (b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith<sup>18</sup>; and

<sup>13</sup> See p. 62, *supra*.

<sup>14</sup> See p. 202, *supra*.

<sup>15</sup> See pp. 7, 145, *supra*.

<sup>16</sup> See pp. 189, 190, *supra*.

<sup>17</sup> See pp. 177, 189, 190, *supra*.

<sup>18</sup> See p. 193, *supra*.



(c) that such notice of the application has been given in the county or borough for which the election was held as to the court seems fit<sup>18</sup>; and under the circumstances it seems to the court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise made the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

*Election expenses.—Nomination of election agent.*

24.—(1.) On or before the day of nomination at an election, a person shall be named by or on behalf of each candidate as his agent for such election (in this Act referred to as the election agent).

(2.) A candidate may name himself as election agent, and thereupon shall so far as circumstances admit, be subject to the provisions of this Act both as a candidate and as an election agent, and any reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

(3.) On or before the day of nomination the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer, and the returning officer shall forthwith give public notice of the name and address of every election agent so declared.

(4.) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked, and in the event of such revocation or his death, whether such event is before, during, or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same.<sup>19</sup>

*Nomination of deputy election agent as sub-agent.*

25.—(1.) In the case of the elections specified in that behalf in the First Schedule to this Act an election agent of a candidate may appoint the number of deputies therein mentioned (which deputies are in this Act referred to as sub-agents), to act within different polling districts.

(2.) As regards matters in a polling district the election agent may act by the sub-agent for that district, and anything done for the purposes of this Act by or to the sub-agent in his district shall be deemed to be done by or to the election agent, and any act or default of a sub-agent which, if he were the election agent, would be an illegal practice or other offence against this Act, shall be an illegal practice and offence against this Act committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly; and the candidate shall suffer the like incapacity as if the said Act or default had been the act or default of the election agent.

(3.) One clear day before the polling the election agent shall declare in writing the name and address of every sub-agent to the returning officer, and the returning officer shall forthwith give public notice of the name and address of every sub-agent so declared.

(4.) The appointment of a sub-agent shall not be vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent for the time being of the candidate, and in the event of such revocation or of the death of a sub-agent another sub-agent may be appointed, and his name and address shall be forthwith declared in writing to the returning officer, who shall forthwith give public notice of the same.<sup>20</sup>

<sup>19</sup> See pp. 55, 56, *supra*.

<sup>20</sup> See pp. 58, 160, *supra*.



*Office of election agent and sub-agent.*

26.—(1.) An election agent at an election for a county or borough shall have within the county or borough, or within any county of a city or town adjoining thereto, and a sub-agent shall have within his district, or within any county of a city or town adjoining thereto, an office or place to which all claims, notices, writs, summons, and documents may be sent, and the address of such office or place shall be declared at the same time as the appointment of the said agent to the returning officer, and shall be stated in the public notice of the name of the agent.<sup>21</sup>

(2.) Any claim, notice, writ, summons, or document delivered at such office or place and addressed to the election agent or sub-agent, as the case may be, shall be deemed to have been served on him, and every such agent may in respect of any matter connected with the election in which he is acting be sued in any court having jurisdiction in the county or borough in which the said office or place is situate.<sup>22</sup>

*Making of contracts through election agent.*

27.—(1.) The election agent of a candidate by himself or by his sub-agent shall appoint every polling agent, clerk, and messenger employed for payment on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.<sup>23</sup>

(2.) A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election unless made by the candidate himself or by his election agent, either by himself or by his sub-agent; provided that the inability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice having been committed by his agent.<sup>23</sup>

*Payment of expenses through election agent.*

28.—(1.) Except as permitted by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election or by any agent on behalf of the candidate or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election, otherwise than by or through the election agent of the candidate, whether acting in person or by a sub-agent; and all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise;

Provided that this section shall not be deemed to apply to a tender of security to or any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

(2.) A person who makes any payment, advance, or deposit in contravention of this section, or pays in contravention of this section any money so provided as aforesaid, shall be guilty of an illegal practice.<sup>24</sup>

*Period for sending in claims and making payments for election expenses.*

29.—(1.) Every payment made by an election agent, whether by himself or a sub-agent, in respect of any expenses incurred on account of or in respect of the conduct or management of an election, shall, except when less than forty shillings, be vouched for by a bill stating the particulars and by a receipt.<sup>25</sup>

<sup>21</sup> See pp. 57, 59, *supra*.

<sup>22</sup> See pp. 57, 59, *supra*.

<sup>23</sup> See p. 57, *supra*.

<sup>24</sup> See pp. 144, 161, *supra*.

<sup>25</sup> See p. 161, *supra*.

(2.) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election which is not sent in to the election agent within the time limited by this Act shall be barred and shall not be paid; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this enactment shall be guilty of an illegal practice.<sup>26</sup>

(3.) Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after the day on which the candidates returned are declared elected.<sup>26</sup>

(4.) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act and not otherwise; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.<sup>27</sup>

(5.) Except as by this Act permitted, the time limited by this Act for the payment of such expenses as aforesaid shall be twenty-eight days after the day on which the candidates returned are declared elected.<sup>28</sup>

(6.) Where the election court reports that it has been proved to such court by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(7.) If the election agent in the case of any claim sent in to him within the time limited by this Act disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.<sup>29</sup>

(8.) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court; and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Act, and to be an exception from the provisions of this Act, requiring claims to be paid by the election agent.<sup>29</sup>

(9.) On cause shown to the satisfaction of the High Court, such court on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.<sup>30</sup>

(10.) Any sum specified in the order of leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act.<sup>30</sup>

#### *Reference to taxation of claim against candidates.*

12. If any action is brought in any competent court to recover a disputed claim against a candidate at an election, or his election agent, in respect of any expenses incurred on account or in respect of the conduct or management of such election, and the defendant admits his liability, but disputes the amount of the claim, the said amount shall, unless the court, on the application of the plaintiff in the action, otherwise directs, be forthwith referred for taxation to the master, official referee, registrar, or other proper officer of the court, and the amount found due on such taxation shall be the amount to be recovered in such action in respect of such claim.

<sup>26</sup> See pp. 140, 144, *supra*.

<sup>27</sup> See p. 144, *supra*.

<sup>28</sup> See p. 144, *supra*.

<sup>29</sup> See p. 140, *supra*.

<sup>30</sup> See pp. 140, 144, *supra*.



*Personal expenses of candidate and petty expenses.*

31.—(1.) The candidate at an election may pay any personal expenses incurred by him on account of or in connexion with or incidental to such election to an amount not exceeding one hundred pounds, but any further personal expenses so incurred by him shall be paid by his election agent.<sup>31</sup>

(2.) The candidate shall send to the election agent within the time limited by this Act for sending in claims a written statement of the amount of personal expenses paid as aforesaid by such candidate.<sup>1</sup>

(3.) Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expenses for stationery, postage, telegrams, and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.<sup>2</sup>

(4.) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Act for the sending in of claims, and shall be vouched for by a bill containing the receipt of that person.

*Remuneration of election agent and returning officer's expenses.*

32.—(1.) So far as circumstances admit, this Act shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.<sup>3</sup>

\* \* \* \* \*

*Return and declaration respecting election expenses.*

33.—(1.) Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate at that election shall transmit to the returning officer a true return (in this Act referred to as a return respecting election expenses), in the form set forth in the Second Schedule to this Act or to the like effect, containing, as respects that candidate,—

(a) A statement of all payments made by the election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression "return respecting election expenses");

(b) A statement of the amount of personal expenses, if any, paid by the candidate;

\* \* \* \* \*

(d) A statement of all other disputed claims of which the election agent is aware;

(e) A statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court;

(f) A statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received.<sup>4</sup>

(2.) The return so transmitted to the returning officer shall be accompanied by a declaration made by the election agent before a justice of the peace in the form in the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

<sup>31</sup> See pp. 15, 140, 144, *supra*.

<sup>1</sup> See p. 15, *supra*.

<sup>2</sup> See p. 144, *supra*.

<sup>3</sup> See p. 161, *supra*.

<sup>4</sup> See pp. 138, 199, *supra*.



(3.) Where the candidate has named himself as his election agent, a statement of all money, securities, and equivalent of money paid by the candidate shall be substituted in the return required by this section to be transmitted by the election agent for the like statement of money, securities, and equivalent of money received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses shall be modified as specified in the Second Schedule to this Act.<sup>5</sup>

(4.) At the same time that the agent transmits the said return or within seven days afterwards, the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace, in the form in the first part of the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).<sup>5</sup>

(5.) If in the case of an election for any county or borough, the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate shall not, after the expiration of such time, sit or vote in the House of Commons as member for that county or borough until either such return and declarations have been transmitted, or until the date of the allowance of such an authorised excuse for the failure to transmit the same, as in this Act mentioned, and if he sits or votes in contravention of this enactment he shall forfeit one hundred pounds for every day on which he so sits or votes to any person who sues for the same.<sup>5</sup>

(6.) If without such authorised excuse as in this Act mentioned, a candidate or an election agent fail to comply with the requirements of this section he shall be guilty of an illegal practice.<sup>6</sup>

(7.) If any candidate or election agent knowingly makes the declaration required by this section falsely, he shall be guilty of an offence; and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.<sup>7</sup>

of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—

(a) If the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declarations,

<sup>5</sup> See p. 139, *supra*.

<sup>6</sup> See p. 139, *supra*.

<sup>7</sup> See p. 139, *supra*.

*Personal expenses of candidate and petty expenses.*

**31.—(1.)** The candidate at an election may pay any personal expenses incurred by him on account of or in connexion with or incidental to such election to an amount not exceeding one hundred pounds, but any further personal expenses so incurred by him shall be paid by his election agent.<sup>31</sup>

(2.) The candidate shall send to the election agent within the time limited by this Act for sending in claims a written statement of the amount of personal expenses paid as aforesaid by such candidate.<sup>1</sup>

(3.) Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expenses for stationery, postage, telegrams, and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.<sup>2</sup>

(4.) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Act for the sending in of claims, and shall be vouched for by a bill containing the receipt of that person.

*Remuneration of election agent and returning officer's expenses.*

**32.—(1.)** So far as circumstances admit, this Act shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.<sup>3</sup>

\* \* \* \* \*

*Return and declaration respecting election expenses.*

**33.—(1.)** Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate at that election shall transmit to the returning officer a true return (in this Act referred to as a return respecting election expenses), in

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The following words in sect. 33 (7) are repealed by sect. 17 of the Perjury Act, 1911: "and in conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury."

The offence described in sect. 33 (7) is an offence under sect. 5 of the Perjury Act, 1911, as well as a corrupt practice.

(2.) The return so transmitted to the returning officer shall be accompanied by a declaration made by the election agent before a justice of the peace in the form in the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

<sup>31</sup> See pp. 15, 140, 144, *supra*.

<sup>1</sup> See p. 15, *supra*.

<sup>2</sup> See p. 144, *supra*.

<sup>3</sup> See p. 161, *supra*.

<sup>4</sup> See pp. 138, 199, *supra*.

(3.) Where the candidate has named himself as his election agent, a statement of all money, securities, and equivalent of money paid by the candidate shall be substituted in the return required by this section to be transmitted by the election agent for the like statement of money, securities, and equivalent of money received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses shall be modified as specified in the Second Schedule to this Act.<sup>5</sup>

(4.) At the same time that the agent transmits the said return or within seven days afterwards, the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace, in the form in the first part of the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).<sup>5</sup>

(5.) If in the case of an election for any county or borough, the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate shall not, after the expiration of such time, sit or vote in the House of Commons as member for that county or borough until either such return and declarations have been transmitted, or until the date of the allowance of such an authorised excuse for the failure to transmit the same, as in this Act mentioned, and if he sits or votes in contravention of this enactment he shall forfeit one hundred pounds for every day on which he so sits or votes to any person who sues for the same.<sup>6</sup>

(6.) If without such authorised excuse as in this Act mentioned, a candidate or an election agent fail to comply with the requirements of this section he shall be guilty of an illegal practice.<sup>6</sup>

(7.) If any candidate or election agent knowingly makes the declaration required by this section falsely, he shall be guilty of an offence; and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.<sup>7</sup>

(8.) Where the candidate is out of the United Kingdom at the time when the return is so transmitted to the returning officer, the declaration required by this section may be made by him within fourteen days after his return to the United Kingdom, and in that case shall be forthwith transmitted to the returning officer, but the delay hereby authorised in making such declaration shall not exonerate the election agent from complying with the provisions of this Act as to the return and declaration respecting election expenses.<sup>7</sup>

(9.) Where, after the date at which the return respecting election expenses is transmitted, leave is given by the High Court for any claims to be paid, the candidate or his election agent shall, within seven days after the payment thereof, transmit to the returning officer a return of the sums paid in pursuance of such leave accompanied by a copy of the order of the court giving the leave, and in default he shall be deemed to have failed to comply with the requirements of this section without such authorised excuse as in this Act mentioned.

*Authorised excuse for non-compliance with provisions as to return and declaration respecting election expenses.*

34.—(1.) Where the return and declarations respecting election expenses of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—

(a) If the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declarations,

<sup>5</sup> See p. 139, *supra*.

<sup>7</sup> See p. 139, *supra*.

<sup>6</sup> See p. 139, *supra*.



or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or sub-agent or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, or

- (b) If the election agent of the candidate applies to the High Court or an election court and shows that the failure to transmit the return and declarations which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness, or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the court may, after such notice of the application in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the court seems fit, make such order for allowing an authorised excuse for the failure to transmit such return and declaration, or for an error or false statement in such return and declaration, as to the court seems just.<sup>8</sup>

(2.) Where it appears to the court that any person being or having been election agent or sub-agent has refused or failed to make such return or to supply such particulars as will enable the candidate and his election agent respectively to comply with the provisions of this Act as to the return and declaration respecting election expenses, the court before making an order allowing the excuse as in this section mentioned shall order such person to attend before the court, and on his attendance shall, unless he shows cause to the contrary, order him to make the return and declaration, or to deliver a statement of the particulars required to be contained in the return, as to the court seems just, and to make or deliver the same within such time and to such person and in such manner as the court may direct, or may order him to be examined with respect to such particulars, and may in default of compliance with any such order order him to pay a fine not exceeding five hundred pounds.

(3.) The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seem best calculated for carrying into effect the object of this Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the court shall relieve the candidate from the consequences of such act or omission on the part of his election agent.

(4.) The date of the order, or if conditions and terms are to be complied with the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.<sup>9</sup>

*Publication of summary of return of election expenses.*

35.—(1.) The returning officer at an election within ten days after he receives from the election agent of a candidate a return respecting election expenses shall publish a summary of the return in not less than

<sup>8</sup> See pp. 141, 189, 197, *supra*.

<sup>9</sup> See pp. 189, 198, *supra*.

two newspapers circulating in the county or borough for which the election was held, accompanied by a notice of the time and place at which the return and declarations (including the accompanying documents) can be inspected, . . .

(2.) The return and declarations (including the accompanying documents) sent to the returning officer by an election agent shall be kept at the office of the returning officer, or some convenient place appointed by him, and shall at all reasonable times during two years next after they are received by the returning officer be open to inspection by any person on payment of a fee of one shilling, and the returning officer shall on demand furnish copies thereof or any part thereof at the price of two-pence for every seventy-two words. After the expiration of the said two years the returning officer may cause the said return and declarations, (including the accompanying documents,) to be destroyed, or, if the candidate or his election agent so require, shall return the same to the candidate.

*Disqualification of electors.—Prohibition of persons guilty of corrupt or illegal practices, &c., from voting.*

36.—Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at an election is prohibited from voting at such election, and if any such person votes his vote shall be void.<sup>10</sup>

*Prohibition of disqualified persons from voting.*

37.—Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.<sup>10</sup>

*Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.*

33.—(1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court, and before any person is reported by election commissioners, to have been guilty, at an election, of any corrupt or illegal practice, the court or commissioners, as the case may be, shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.<sup>11</sup>

(2.) Every person reported by election commissioners to have been guilty at an election of any corrupt or illegal practice may appeal against such report to the next court of oyer and terminer or gaol delivery held in and for the county or place in which the offence is alleged to have been committed, and such court may hear and determine the appeal; and subject to rules of court such appeal may be brought, heard, and determined in like manner as if the court were a court of quarter sessions and the said commissioners were a court of summary jurisdiction, and the person so reported had been convicted by a court of summary jurisdiction for an offence under this Act, and notice of every such appeal shall be

<sup>10</sup> See p. 48, *supra*.

<sup>11</sup> Notwithstanding the words "by himself" and *R. v. Mansell Jones* (1889), 23 Q. B. D. 29, the Courts have allowed such persons to be represented

by counsel. See *Hexham* (1892), Day E. C. 78; *Rochester* (1892), *ibid.*; *Worcester* (1906), 5 O. & H. 214; *Hartlepool* (1910), 6 O. & H. 1; *East Dorset* (1910), 6 O. & H. 22.



given to the Director of public prosecutions in the manner and within the time directed by rules of court, and subject to such rules then within three days after the appeal is brought.

(3.) Where it appears to the Lord Chancellor that appeals under this section are interfering or are likely to interfere with the ordinary business transacted before any courts of oyer and terminer or gaol delivery, he may direct that the said appeals, or any of them, shall be heard by the judges for the time being on the rota for election petitions, and in such case one of such judges shall proceed to the county or place in which the offences are alleged to have been committed, and shall there hear and determine the appeals in like manner as if such judge were a court of oyer and terminer.

(4.) The provisions of the Parliamentary Elections Act, 1868, with respect to the reception and powers of and attendance on an election court, and to the expenses of an election court, and of receiving and accommodating an election court, shall apply as if such judge were an election court.

(5.) Every person who after the commencement of this Act is reported by any election court or election commissioners to have been guilty of any corrupt or illegal practice at an election shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty: Provided that a report of any election commissioners inquiring into an election for a county or borough shall not avoid the election of any candidate who has been declared by an election court on the trial of a petition respecting such election to have been duly elected at such election or render him incapable of sitting in the House of Commons for the said county or borough during the Parliament for which he was elected.<sup>12</sup>

(6.) Where a person who is a justice of the peace is reported by any election court or election commissioners to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to report the case to the Lord High Chancellor of Great Britain with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being, or having been, mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court or election commissioners, to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognisance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:

- (a) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licences.
- (b) If it appears to an election court or election commissioners that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises,

<sup>12</sup> See p. 48, *supra*.



such court or commissioners (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and whether such person obtained a certificate of indemnity or not it shall be the duty of the Director of public prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences.

- (c) Where an entry is made in the register of licences of any such conviction or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

(9.) Where the evidence showing any corrupt practice to have been committed by a justice of the peace, barrister, solicitor, or other professional person, or any licensed person, was given before election commissioners, those commissioners shall report the case to the Director of public prosecutions, with such information as is necessary or proper for enabling him to act under this section.

(10.) This section shall apply to an election court under this Act, or under Part IV. of the Municipal Corporations Act, 1882, and the expression election shall be construed accordingly.

*List in register of voters of persons incapacitated for voting by  
corrupt or illegal practices.*

39.—(1.) The registration officer in every county and borough shall annually make out a list containing the names and description of all persons who, though otherwise qualified to vote at a parliamentary election for such county or borough respectively, are not capable of voting by reason of having after the commencement of this Act been found guilty of a corrupt or illegal practice on conviction or by the report of any election court or election commissioners whether under this Act, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office; and such officer shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in any of the following places; that is to say,

- (a) if he is the registration officer of a county, in that county, or in any borough in that county; and
- (b) if he is the registration officer of a borough, in the county in which such borough is situate, or in any borough in that county.

\* \* \* \* \*

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any list of voters for the county or borough may object to the omission of the name of any person from such list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the registration of parliamentary electors.

(5.) The revising barrister<sup>13</sup> shall determine such claims and objections and shall revise such list in like manner as nearly as circumstances admit as in the case of other claims and objections, and of any list of voters.

(6.) Where it appears to the revising barrister that a person not named in the corrupt and illegal practices list is subject to have his name inserted in such list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in such list and expunge his name from any list of voters.

(7.) A revising barrister<sup>13</sup> in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the register of electors, and shall be printed and published therewith wherever the same is printed or published.<sup>14</sup>

*Proceedings on election petition.—Time for presentation of election petitions alleging illegal practice.*

**40.**—(1.) Where an election petition questions the return or the election upon an allegation of an illegal practice, then notwithstanding anything in the Parliamentary Elections Act, 1868, such petition, so far as respects such illegal practice, may be presented within the time following; (that is to say),

(a) At any time before the expiration of fourteen days after the day on which the returning officer receives the return and declarations respecting election expenses by the member to whose election the petition relates and his election agent<sup>14</sup>;

(b) If the election petition specifically alleges a payment of money, or some other act to have been made or done since the said day by the member or an agent of the member, or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act.<sup>15</sup>

(2.) Any election petition presented within the time limited by the Parliamentary Elections Act, 1868, may for the purpose of questioning the return or the election upon an allegation of an illegal practice be amended with the leave of the High Court within the time within which a petition questioning the return upon the allegation of that illegal practice can under this section be presented.

(3.) This section shall apply in the case of an offence relating to the return and declarations respecting election expenses in like manner as if it were an illegal practice, and also shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.

(4.) For the purposes of this section—

(a) where the return and declarations are received on different days, the day on which the last of them is received, and

(b) where there is an authorised excuse for failing to make and transmit the return and declarations respecting election expenses, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse,

<sup>13</sup> Under the R. P. Act, 1918, the office of revising barrister is abolished, and his place is taken by the registration officer. See eighth Sch. and first

Sch. rules 20 to 26.

<sup>14</sup> See pp. 203, 218, *supra*.

<sup>15</sup> See p. 203, *supra*.



shall be substituted for the day on which the return and declarations are received by the returning officer.

(5.) For the purposes of this section, time shall be reckoned in like manner as it is reckoned for the purposes of the Parliamentary Elections Act, 1868.

*Withdrawal of election petition.*

41.—(1.) Before leave for the withdrawal of an election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, and by the election agents of all of the said parties who were candidates at the election, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.<sup>16</sup>

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking, prohibited by this section, the court shall have the same power with respect to the security as under section thirty-five of the Parliamentary Elections Act, 1868, where the withdrawal is induced by a corrupt consideration.

(7.) In every case of the withdrawal of an election petition the court shall report to the Speaker whether, in the opinion of such court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(9.) Where a person not a solicitor is lawfully acting as agent in the case of an election petition, that agent shall be deemed to be a solicitor for the purpose of making an affidavit in pursuance of this section.

<sup>16</sup> See p. 208, *supra*.



*Continuation of trial of election petition.*

42. The trial of every election petition so far as is practicable, consistently with the interests of justice in respect of such trial, shall be continued *de die in diem* on every lawful day until its conclusion, and in case the rota of judges for the year shall expire before the conclusion of the trial, or of all the proceedings in relation or incidental to the petition, the authority of the said judges shall continue for the purpose of the said trial and proceedings.<sup>17</sup>

*Attendance of Director of Public Prosecutions on trial of election petition, and prosecution by him of offenders.*

43.—(1.) On every trial of an election petition the Director of public prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.<sup>18</sup>

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.<sup>19</sup>

(3.) It shall also be the duty of the said Director, without any direction from the election court, if it appears to him that any person who has not received a certificate of indemnity has been guilty of a corrupt or illegal practice, to prosecute such person for the offence before the said court, or if he thinks it expedient in the interests of justice before any other competent court.<sup>19</sup>

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is rendered subject to under this Act upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence;

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.<sup>20</sup>

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.<sup>21</sup>

<sup>17</sup> See p. 222, *supra*.

<sup>18</sup> See pp. 231, 235, *supra*.

<sup>19</sup> See p. 231, *supra*.

<sup>20</sup> See pp. 54, 200, 231, *supra*.

<sup>21</sup> See p. 232, *supra*.

(6.) Upon such order being made—

- (a) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and
- (b) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and
- (c) if the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him, before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted, shall order him to be brought before that court.

(7.) The Director of public prosecutions may nominate, with the approval of the Attorney-General, a barrister or solicitor of not less than ten years standing to be his representative for the purpose of this section, and that representative shall receive such remuneration as the Commissioners of Her Majesty's Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Commissioners of Her Majesty's Treasury may approve.

(8.) The costs incurred in defraying the expenses of the Director of public prosecutions under this section (including the remuneration of his representative) shall, in the first instance, be paid by the Commissioners of Her Majesty's Treasury, and so far as they are not in the case of any prosecution paid by the defendant shall be deemed to be expenses of the election court; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Commissioners of Her Majesty's Treasury by the parties to the petition, or such of them as the court may direct.

*Power to election court to order payment by county or borough or individual of costs of election petition.*

44.—(1.) Where upon the trial of an election petition respecting an election for a county or borough it appears to the election court that a corrupt practice has not been proved to have been committed in reference to such election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows:

- (a) if it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the county or borough; and
- (b) if it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why the order should not be



made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.<sup>22</sup>

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person.<sup>23</sup>

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under the Parliamentary Elections Act, 1868, and under this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client.<sup>24</sup>

*Miscellaneous.—Inquiry by Director of public prosecutions into alleged corrupt or illegal practices.*

45. Where information is given to the Director of public prosecutions that any corrupt or illegal practices have prevailed in reference to any election, it shall be his duty, subject to the regulations under the Prosecution of Offences Act, 1879, to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

*Removal of incapacity on proof that it was procured by perjury.*

46. Where a person has, either before or after the commencement of this Act, become subject to any incapacity under the Corrupt Practices Prevention Acts or this Act by reason of a conviction or of a report of any election court or election commissioners, and any witness who gave evidence against such incapacitated person upon the proceeding for such conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the court, if satisfied that the conviction or report so far as respects such person was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly.

*Conveyance of voters by sea in certain cases.*

48. Where the nature of a county is such that any electors residing therein are unable at an election for such county to reach their polling place without crossing the sea or a branch or arm thereof, this Act shall not prevent the provision of means for conveying such electors by sea to their polling place, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Act.<sup>25</sup>

*Election commissioners not to inquire into elections before the passing of this Act.*

49. Notwithstanding the provisions of the Act 15 & 16 Vict. cap. 57, or any amendment thereof, in any case where, after the passing of this Act, any commissioners have been appointed, on a joint address of both Houses of Parliament, for the purpose of making inquiry into the existence of corrupt practices in any election, the said commissioners shall not make

<sup>22</sup> See p. 212, *supra*.

<sup>23</sup> See p. 212, *supra*.

<sup>24</sup> See p. 210, *supra*.

<sup>25</sup> See p. 147, *supra*.



inquiries concerning any election that shall have taken place prior to the passing of this Act, and no witness called before such commissioners, or at any election petition after the passing of this Act, shall be liable to be asked or bound to answer any question for the purpose of proving the commission of any corrupt practice at or in relation to any election prior to the passing of this Act: Provided that nothing herein contained shall affect any proceedings that shall be pending at the time of such passing.<sup>26</sup>

*Legal Proceedings.—Trial in Central Criminal Court of indictment for corrupt practice at instance of Attorney-General.*

50. Where an indictment as defined by this Act for any offence under the Corrupt Practices Prevention Acts or this Act is instituted in the High Court or is removed into the High Court by a writ of certiorari issued at the instance of the Attorney-General, and the Attorney-General suggests on the part of the Crown that it is expedient for the purposes of justice that the indictment should be tried in the Central Criminal Court, or if a special jury is ordered, that it should be tried before a judge and jury at the Royal Courts of Justice, the High Court may, if it think fit, order that such indictment shall be so tried upon such terms as the court may think just, and the High Court may make such orders as appear to the court necessary or proper for carrying into effect the order for such trial.

*Limitation of time for prosecution of offence.*

51.—(1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence under the Corrupt Practices Prevention Acts or this Act shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners shall be commenced within one year after the offence was committed, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an election court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts.<sup>27</sup>

(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

*Persons charged with corrupt practice may be found guilty of illegal practice.*

52. Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence), and any person charged with an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice, and a person charged with illegal payment, employment, or hiring, may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

<sup>26</sup> See p. 229, *supra*.

<sup>27</sup> See p. 201, *supra*.

*Application of enactments of 17 & 18 Vict. c. 102, and 26 & 27 Vict. c. 29, relating to prosecutions for bribery.*

53.—(1.) Sections ten, twelve, and thirteen of the Corrupt Practices Prevention Act, 1854, and section six of the Corrupt Practices Prevention Act, 1863 (which relate to prosecution for bribery and other offences under those Acts), shall extend to any prosecution on indictment for the offence of any corrupt practice within the meaning of this Act, and to any action for any pecuniary forfeiture for an offence under this Act, in like manner as if such offence were bribery within the meaning of those Acts, and such indictment or action were the indictment or action in those sections mentioned, and an order under the said section ten may be made on the defendant; but the Director of public prosecutions or any person instituting any prosecution in his behalf or by direction of an election court shall not be deemed to be a private prosecutor, nor required under the said sections to give any security.

(2.) On any prosecution under this Act, whether on indictment or summarily, and whether before an election court or otherwise, and in any action for a pecuniary forfeiture under this Act, the person prosecuted or sued, and the husband or wife of such person, may, if he or she think fit, be examined as an ordinary witness in the case.

(3.) On any such prosecution or action as aforesaid it shall be sufficient to allege that the person charged was guilty of an illegal practice, payment, employment, or hiring within the meaning of this Act, as the case may be, and the certificate of the returning officer at an election that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, shall be sufficient evidence of the facts therein stated.

*Prosecution on summary conviction, and appeal to quarter sessions.*

54.—(1.) All offences under this Act punishable on summary conviction may be prosecuted in manner provided by the Summary Jurisdiction Acts.<sup>28</sup>

(2.) A person aggrieved by a conviction by a court of summary jurisdiction for an offence under this Act may appeal to general or quarter sessions against such conviction.

*Application of Summary Jurisdiction and Indictable Offences Acts to proceedings before election courts.*

55.—(1.) Except that nothing in this Act shall authorise any appeal against a summary conviction by an election court, the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence summarily before an election court, in like manner as if it were an offence punishable only on summary conviction, and accordingly the attendance of any person may be enforced, the case heard and determined and any summary conviction by such court carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with under those Acts in like manner as if the court were a petty sessional court for the county or place in which such conviction took place.

(2.) The enactments relating to charges before justices against persons for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an election court orders a person to be prosecuted on indictment in like manner as if the court were a justice of the peace.

*Exercise of jurisdiction of High Court, and making of rules of court.*

56.—(1.) Subject to any rules of court, any jurisdiction vested by this Act in the High Court may, so far as it relates to indictments or other

<sup>28</sup> See p. 202, *supra*.



criminal proceedings, be exercised by any judge of the Queen's Bench Division, and in other respects may either be exercised by one of the judges for the time being on the rota for the trial of election petitions, sitting either in court or at chambers, or may be exercised by a master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said judges:

Provided that a master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.<sup>29</sup>

(2.) Rules of court may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can for the time being be made.

*Director of public prosecutions, and expenses of prosecutions.*

57.—(1.) The Director of public prosecutions in performing any duty under this Act shall act in accordance with the regulations under the Prosecution of Offences Act, 1879, and subject thereto in accordance with the directions (if any) given to him by the Attorney-General; and any assistant or representative of the Director of public prosecutions in performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the Director of public prosecutions.

(2.) Subject to the provisions of this Act, the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of public prosecutions or his representative or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a prosecution for felony are paid.

*Recovery of costs payable by county or borough or by person.*

58.—(1.) Where any costs or other sums (not being costs of a prosecution on indictment) are, under an order of an election court, or otherwise under this Act, to be paid by a county or borough, the Commissioners of Her Majesty's Treasury shall pay those costs or sums, and obtain repayment of the amount so paid, in like manner as if such costs and sums were expenses of election commissioners paid by them, and the Election Commissioners Expenses Acts, 1869 and 1871, shall apply accordingly as if they were herein re-enacted and in terms made applicable to the above-mentioned costs and sums.<sup>30</sup>

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Commissioners of Her Majesty's Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

*Supplemental provisions, definitions, savings, and repeal.—Obligation of witness to answer, and certificate of indemnity.*

59.—(1.) A person who is called as a witness respecting an election before any election court shall not be excused from answering any question relating to any offence at or connected with such election, on the ground that the answer thereto may criminate or tend to criminate himself on the ground of privilege;

<sup>29</sup> See p. 193, *supra*.

<sup>30</sup> See p. 212, *supra*.



Provided that—

- (a) a witness who answers truly all questions which he is required by the election court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the court stating that such witness has so answered: and
- (b) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him:<sup>1</sup>

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts or this Act committed by him previously to the date of the certificate at or in relation to the said election, the court having cognisance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.<sup>2</sup>

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any election commissioners, in like manner as if the expression "election court" in this section included election commissioners.

(5.) Where a solicitor or person lawfully acting as agent for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the election commissioners inquiring into such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition.

*Submission of report of election court or commissioners to  
Attorney-General.*

60. An election court or election commissioners, when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution.<sup>3</sup>

*Breach of duty by officer.*

61.—(1.) Section eleven of the Ballot Act, 1872, shall apply to a returning officer or presiding officer or clerk who is guilty of any wilful misfeasance or wilful act or omission in contravention of this Act in like manner as if the same were in contravention of the Ballot Act, 1872.

(2.) Section ninety-seven of the Parliamentary Registration Act, 1843, shall apply to every registration officer who is guilty of any wilful misfeasance or wilful act of commission or omission contrary to this Act in like manner as if the same were contrary to the Parliamentary Registration Act, 1843.

*Publication and service of notices.*

62.—(1.) Any public notice required to be given by the returning officer under this Act shall be given in the manner in which he is directed by the Ballot Act, 1872, to give a public notice.

<sup>1</sup> See p. 230, *supra*.

<sup>3</sup> See p. 233, *supra*.

<sup>2</sup> See p. 230, *supra*.

(2.) Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting an election for a county or borough, whether for the purpose of causing him to appear before the High Court or any election court, or election commissioners, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any court or commissioners, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said county or borough, or if the proceeding is before any court or commissioners, in such other manner as the court or commissioners may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

(3.) In the form of notice of a parliamentary election set forth in the Second Schedule to the Ballot Act, 1872, the words "or any illegal practice" shall be inserted after the words "or other corrupt practices," and the words the "Corrupt and Illegal Practices Prevention Act, 1883," shall be inserted after the words "Corrupt Practices Prevention Act, 1854."

*Definition of candidate, and saving for persons nominated without consent.*

63.—(1.) In the Corrupt Practices Prevention Acts, as amended by this Act, the expression "candidate at an election" and the expression "candidate" respectively mean, unless the context otherwise requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued<sup>4</sup>;

(2.) Provided that where a person has been nominated as a candidate or declared to be a candidate by others, then—

- (a) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration or has been elected; and
- (b) If he was so nominated or declared, either without his consent or in his absence and he takes no part in the election, he may, if he thinks fit, make the declaration respecting election expenses contained in the second part of the Second Schedule to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent.

*General interpretation of terms.*

64. In this Act, unless the context otherwise requires—

The expression "election" means the election of a member or members to serve in Parliament:

The expression "election petition" means a petition presented in pursuance of the Parliamentary Elections Act, 1868, as amended by this Act:

The expression "election court" means the judges presiding at the trial of an election petition, or, if the matter comes before the High Court, that court:

<sup>4</sup> See pp. 149, 202, *supra*.

The expression "Election Commissioners" means commissioners appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same:

The expression "High Court" means Her Majesty's High Court of Justice in England:

The expressions "court of summary jurisdiction," "petty sessional court," and "Summary Jurisdiction Acts" have the same meaning as in the Summary Jurisdiction Act, 1879:

The expression "the Attorney General" includes the Solicitor General in cases where the office of the Attorney General is vacant or the Attorney General is interested or otherwise unable to act:

\* \* \* \* \*

The expression "elector" means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used:

The expression "register of electors" means the said register roll or book:

The expression "polling agent" means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to or amending the same:

The expression "person" includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committeemen, or others:

The expression "public office"<sup>5</sup> means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such character or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly:

The expression "judicial office"<sup>5</sup> includes the office of justice of the peace and revising barrister<sup>6</sup>:

The expression "personal expenses" as used with respect to the expenditure of any candidate in relation to any election includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election<sup>7</sup>:

<sup>5</sup> See p. 200, *supra*.

<sup>7</sup> See p. 139, *supra*.

<sup>6</sup> See footnote 13 on page 320, *supra*.



The expression "indictment" includes information :

The expression "costs" includes costs, charges, and expenses :

The expression "payment"<sup>8</sup> includes any pecuniary or other reward ; and the expressions "pecuniary reward" and "money" shall be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly :

The expression "Licensing Acts" means the Licensing Acts, 1872 to 1874 :

Other expressions have the same meaning as in the Corrupt Practices Prevention Acts.<sup>9</sup>

#### *Short titles.*

**65.**—(1.) The enactments described in the Third Schedule to this Act are in this Act referred to as the Corrupt Practices Prevention Acts.

(2.) The Acts mentioned in the Fourth Schedule to this Act are in this Act referred to and may be cited respectively by the short titles in that behalf in that schedule mentioned.

(3.) This Act may be cited as the Corrupt and Illegal Practices Prevention Act, 1883.

(4.) This Act and the Corrupt Practices Prevention Acts may be cited together as the Corrupt Practices Prevention Acts, 1854 to 1883.

#### *Repeal of Acts.*

**66.** The Acts set forth in the Fifth Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, provided that this repeal or the expiration of any enactment not continued by this Act shall not revive any enactment which at the commencement of this Act is repealed, and shall not affect anything duly done or suffered before the commencement of this Act, or any right acquired or accrued or any incapacity incurred before the commencement of this Act, and any person subject to any incapacity under any enactment hereby repealed or not continued shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

#### *Commencement of Act.*

**67.** This Act shall come into operation on the fifteenth day of October one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

#### *Application of Act to Scotland.*

**68.** This Act shall apply to Scotland, with the following modifications .

(1.) The following expressions shall mean as follows :

The expression "misdemeanor" shall mean crime and offence :

The expression "indictment" shall include criminal letters :

The expression "solicitor" shall mean enrolled law agent :

The expression "revising barrister"<sup>9</sup> shall mean sheriff :

The expression "barrister" shall mean advocate :

The expression "petty sessional court" shall mean sheriff court :

The expression "quarter sessions" shall mean the Court of Justiciary :

\* \* \* \* \*

The expression "municipal borough" shall include royal burgh and burgh of regality and burgh of barony :

The expression "Acts relating to municipal corporations" shall include the General Police and Improvement (Scotland) Act, 1862, and any

<sup>8</sup> See p. 176, *supra*.

<sup>9</sup> See footnote <sup>13</sup> on page 320, *supra*.

other Act relating to the constitution and government of burghs in Scotland:

The expression "mayor" shall mean provost or chief magistrate:

The expression "alderman" shall mean bailie:

The expression "Summary Jurisdiction Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same.

(2.) The provisions of this Act with respect to polling districts and the expenses of dividing a county or borough into polling districts shall not apply to Scotland.

(3.) The provisions respecting the attendance at the trial of an election petition of a representative of the Director of public prosecutions shall not apply to Scotland, and in place thereof the following provisions shall have effect:

(a) At the trial of every election petition in Scotland Her Majesty's advocate shall be represented by one of his deputies or by the procurator-fiscal of the sheriff court of the district, who shall attend such trial as part of his official duty, and shall give all necessary assistance to the judge with respect to the citation of witnesses and recovery of documents:

(b) If the judge shall grant a warrant for the apprehension, commitment, or citation of any person suspected of being guilty of a corrupt or illegal practice, the case shall be reported to Her Majesty's advocate in order that such person may be brought to trial before the High Court of Justiciary or the sheriff, according to the nature of the case:

(c) It shall be the duty of the advocate depute or, in his absence, the procurator-fiscal, if it appears to him that a corrupt or illegal practice within the meaning of this Act has been committed by any person who has not received a certificate of indemnity, to report the case to Her Majesty's advocate in order that such person being brought to trial before the proper court, although no warrant may have been issued by the judge.

(4.) The jurisdiction of the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a judge of the said court to whom the same may be remitted by such division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of sederunt for the purposes of this Act.

(5.) Court of Oyer and Terminer shall mean a circuit court of Justiciary, and the High Court of Justiciary shall have powers to make acts of adjournal regulating the procedure in appeals to the circuit court under this Act.

(6.) All offences under this Act punishable on summary conviction may be prosecuted in the sheriff court in manner provided by the Summary Jurisdiction Acts, and all necessary jurisdictions are hereby conferred on sheriffs.

(7.) The authority given by this Act to the Director of public prosecutions in England shall in Scotland be exercised by Her Majesty's advocate, and the reference to the Prosecution of Offences Act, 1879, shall not apply.

(8.) The expression "Licensing Acts" shall mean "the Public Houses Acts Amendment (Scotland) Act, 1862," and "The Publicans' Certificates (Scotland) Act, 1876," and the Acts thereby amended and therein recited.

(9.) The expression "register of licences" shall mean the register kept in pursuance of section twelve of the Act of the ninth year of the reign of King George the Fourth, chapter fifty-eight.

(10.) The references to the Public Health Act, 1875, and to the Elementary Education Act, 1870, shall be construed to refer to the Public Health (Scotland) Act, 1867, and to the Elementary Education (Scotland) Act, 1872.

(11.) Any reference to the Parliamentary Elections Returning Officers Act, 1875, shall not apply.

\* \* \* \* \*

(13.) The power given by this Act to the Lord Chancellor in England shall in Scotland except so far as relates to the justices of the peace be exercised by the Lord Justice General.

(14.) Any reference to the Attorney-General shall refer to the Lord Advocate.

(15.) The provisions with respect to the removal of cases to the Central Criminal Court or to the trial of cases at the Royal Courts of Justice shall not apply.

(16.) Section thirty-eight of the County Voters Registration (Scotland) Act, 1861, shall be substituted for section ninety-seven of the Parliamentary Registration Act, 1843, where reference is made to that section in this Act.

(17.) The provision of this Act with regard to costs shall not apply to Scotland, and instead thereof the following provision shall have effect:

The costs of petitions and other proceedings under the Parliamentary Elections Act, 1868, and under this Act, shall, subject to any regulations which the Court of Session may make by act of sederunt, be taxed as nearly as possible according to the same principles as costs between agent and client are taxed in a cause in that court, and the auditor shall not allow any costs, charges, or expenses on a higher scale.

#### *Application of Act to Ireland.*

69. This Act shall apply to Ireland, with the following modifications:

(1.) No person shall be tried for any offence against this Act under any of the provisions of the Prevention of Crime (Ireland) Act, 1882.

(2.) The expression "Summary Jurisdiction Acts" means, with reference to the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace and of the police in such district; and with reference to other parts of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Acts amending the said Act.

(3.) Section one hundred and three of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, shall be substituted for section ninety-seven of the Parliamentary Registration Act, 1843, where reference is made to that section in this Act.

(4.) The provision with respect to the registration officer sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof, it is hereby enacted that the registration officer shall, after making out such list, himself publish the same. . . .

(5.) The Supreme Court of Judicature in Ireland shall be substituted for the Supreme Court of Judicature.

(6.) The High Court of Justice in Ireland shall be substituted for the High Court of Justice in England.

(7.) The Lord High Chancellor of Ireland shall be substituted for the Lord High Chancellor of Great Britain.

(8.) The Attorney-General for Ireland shall be substituted for the Director of Public Prosecutions, and the reference to the Prosecution of the Offences Act, 1879, shall not apply.

\* \* \* \* \*

(10.) Any reference to Part IV. of the Municipal Corporations Act, 1882, shall be construed to refer to the Corrupt Practices (Municipal Elections) Act, 1872.

(11.) Any reference to the Licensing Acts shall be construed to refer to the Licensing Acts (Ireland), 1872—1874.



- (12.) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875.
- (13.) The provisions with respect to the removal of cases to the Central Criminal Court, or to the trial of cases at the Royal Courts of Justice, shall not apply to Ireland.

*Continuance.*

70. This Act shall continue in force until the thirty-first day of December one thousand eight hundred and eighty-four, and no longer, unless continued by Parliament; and such of the Corrupt Practices Prevention Acts as are referred to in Part One of the Third Schedule to this Act shall continue in force until the same day, and no longer, unless continued by Parliament.<sup>10</sup>

## SCHEDULES.

### FIRST SCHEDULE.

#### PART I.—PERSONS LEGALLY EMPLOYED FOR PAYMENT.<sup>11</sup>

- (1.) One election agent and no more.
- (2.) In counties one deputy election agent (in this Act referred to as a sub-agent) to act within each polling district and no more.<sup>12</sup>
- (3.) One polling agent in each polling station and no more.
- (4.) In a borough one clerk and one messenger, or if the number of electors in the borough exceeds five hundred, a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred.
- (5.) In a county for the central committee room one clerk and one messenger, or if the number of electors in the county exceeds five thousand, then a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five thousand electors in the county; and if there is a number of electors over and above any complete five thousand or complete five thousands of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five thousand.
- (6.) In a county a number of clerks and messengers not exceeding in number one clerk and one messenger for each polling district in the county, or where the number of electors in a polling district exceeds five hundred one clerk and one messenger for every complete five hundred electors in the polling district, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred: Provided always, that the number of clerks and messengers so allowed in any county may be employed in any polling district where their services may be required.

\* \* \* \* \*

- (8.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of this part of this schedule shall apply as if such borough were a county.<sup>13</sup>

<sup>10</sup> The Act has been continued from year to year by the Expiring Laws Continuance Acts.

*supra.*

<sup>12</sup> See p. 58, *supra*.

<sup>13</sup> See p. 58, *supra*.

<sup>11</sup> See pp. 54, 58, 143, 149, 182,

PART II.—LEGAL EXPENSES IN ADDITION TO EXPENSES UNDER PART I.<sup>14</sup>

\* \* \* \* \*

(2.) The personal expenses of the candidate.

(3.) The expenses of printing, the expenses of advertising, and the expenses of publishing, issuing, and distributing addresses and notices.

(4.) The expenses of stationery, messages, postage, and telegrams.

(5.) The expenses of holding public meetings.

(6.) In a borough the expenses of one committee room and if the number of electors in the borough exceeds five hundred then of a number of committee rooms not exceeding the number of one committee room for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then of one committee room for such number, although not amounting to a complete five hundred.

(7.) In a county the expenses of a central committee room, and in addition of a number of committee rooms not exceeding in number one committee room for each polling district in the county, and where the number of electors in a polling district exceeds five hundred one additional committee room may be hired for every complete five hundred electors in such polling district over and above the first five hundred.

PART III.—MAXIMUM FOR MISCELLANEOUS MATTERS.

Expenses in respect of miscellaneous matters other than those mentioned in Part I. and Part II. of this schedule not exceeding in the whole the maximum amount of two hundred pounds, so nevertheless that such expenses are not incurred in respect of any matter or in any manner constituting an offence under this or any other Act, or in respect of any matter or thing, payment for which is expressly prohibited by this or any other Act.

PART IV.—MAXIMUM SCALE.

*The expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and the fee, if any, paid to the election agent (not exceeding in the case of a county election seventy-five pounds and of a borough election fifty pounds, without reckoning for the purposes of that limit any part of the fee which may have been included in the expenses first above mentioned) shall not exceed an amount equal—*

*in the case of a county election to sevenpence for each elector on the register;*

*in the case of an election for a borough to fivepence for each elector on the register.*

*Where there are two or more joint candidates at an election, the maximum amount of expenses mentioned in Parts III. and IV. of this schedule shall, for each of the joint candidates, be the amount produced by multiplying a single candidate's maximum by one-and-a-half and dividing the result by the number of joint candidates.<sup>15</sup>*

PART V.—GENERAL.

(1.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of Parts II., III., and IV. of this schedule shall apply as if such borough were a county.

(2.) For the purposes of this schedule the number of electors shall be taken according to the enumeration of the electors in the register of electors.

<sup>14</sup> See pp. 54, 61, 182, 185, *supra*.

<sup>15</sup> The words in *italics* are substituted for the words originally appearing in Part IV. above by the Representation of

the People Act, 1918. s. 33 (1), p. 176. *supra*, and Fourth Schedule, p. 293. *supra*.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses mentioned in Parts III. and IV. of this schedule shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where the same election agent is appointed by or on behalf of two more candidates at an election, or where two or more candidates, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same sub-agents, clerks, messengers, or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election.<sup>16</sup>

Provided that—

- (a) The employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.
- (b) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates.
- (c) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.<sup>17</sup>

## SECOND SCHEDULE.

### PART I.—FORM OF DECLARATION AS TO EXPENSES.<sup>18</sup>

#### *Form for Candidate.*

I , having been a candidate at the election for the county [or borough] of on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses [about to be] transmitted by my election agent [or if the candidate is his own election agent, by me] to the returning officer at the said election, a copy of which is now shown to me and marked , and to the best of my knowledge and belief that return is correct;

And I further solemnly and sincerely declare that, except as appears from that return, I have not, and to the best of my knowledge and belief no person, nor any club, society, or association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I have paid to my election agent [if the candidate is also his own election agent, leave out "to my election agent"] the sum of pounds and no more for the

<sup>16</sup> See p. 152, *supra*.

<sup>17</sup> See p. 56, *supra*.

<sup>18</sup> See pp. 136, 199, *supra*.



purpose of the said election, and that, except as specified in the said return, no money, security, or equivalent for money has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of my election agent [*or if the candidate is his own election agent, myself*] or any other person for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of, any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

*Signature of declarant*

C.D.

Signed and declared by the above-named declarant on the      day of      , before me.

(Signed)      E.F.

Justice of the Peace for

*Form for Election Agent.*

I,      , being election agent to      , candidate at the election for the county [*or borough*] of      , on the      day of      , do hereby solemnly and sincerely declare that I have examined the return of election expenses about to be transmitted by me to the returning officer at the said election, and now shown to me and marked      , and to the best of my knowledge and belief that return is correct;

And I hereby further solemnly and sincerely declare that, except as appears from that return, I have not and to the best of my knowledge and belief no other person, nor any club, society, or association has on behalf of the said candidate made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I have received from the said candidate      pounds and no more [*or nothing*] for the purpose of the said election, and that, except as specified in the said return sent by me, no money, security, or equivalent for money has been paid, advanced, given, or deposited by anyone to me or in my hands, or, to the best of my knowledge and belief, to or in the hands of any other person for the purpose of defraying any expenses incurred on behalf of the said candidate on account of, or in respect of the conduct or management of the said election.

*Signature of declarant*

A.B.

Signed and declared by the above-named declarant on the      day of      , before me.

(Signed)      E.F.

Justice of the Peace for

FORM OF RETURN OF ELECTION EXPENSES.

I, A.B., being election agent to C.D., candidate at the election for the county [*or borough*] of      on the      day of      , make the following return respecting election expenses of the said candidate at the said election [*or where the candidate has named himself as election agent, "I, C.D., candidate at the election for the county [*or borough*] of      on the      day of      , acting as my own election agent, make the following return respecting my election expenses at the said election"*].

*Receipts.*

Received of [the above-named candidate] [or where the candidate is his own election agent, "Paid by me"] . . . . . £  
 Received of J. K. . . . . £

[Here set out the name and description of every person, club, society, or association, whether the candidate or not, from whom any money, securities, or equivalent of money was received in respect of expenses incurred on account of or in connection with or incidental to the above election, and the amount received from each person, club, society, or association separately.]

*Expenditure.*

*	*	*	*	*	*
Personal expenses of the said C.D., paid by himself [or if the candidate is his own election agent, "Paid by me as candidate"]					£
Do. do. paid by me [or if the candidate is his own election agent, add "acting as election agent"]					£
Received by me for my services as election agent at the said election [or if the candidate is his own election agent, leave out this item]					£
Paid to G.H. as sub-agent of the polling district of					£
[The name and description of each sub-agent and the sum paid to him must be set out separately.]					

Paid to	as polling agent					£
Paid to	as clerk for	days	services			£
Paid to	as messenger for	days	services			£

[The names and descriptions of every polling agent, clerk, and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account, thus, "Paid to polling agents (or as the case may be) as per annexed list £ . . ."]

Paid to the following persons in respect of goods supplied or work and labour done:

To P.Q. (printing)						£
To M.N. (advertising)						£
To R.S. (stationery)						£

[The name and description of each person, and the nature of the goods supplied, or the work and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

Paid for postage						£
Paid for telegrams						£
Paid for the hire of rooms as follows:						
For holding public meetings						£
For committee rooms						£

[A room hired for a public meeting or for a committee room must be named or described so as to identify it; and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

Paid for miscellaneous matters, namely—						£
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[The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out separately either in the account or in a separate list annexed to and referred to in the account.]

In addition to the above, I am aware as election agent for C.D.,  
[or if the candidate is his own election agent, leave out "as  
election agent for C.D."] of the following disputed and unpaid  
claims; namely,—

Disputed claims .

By T.U. for . . . . . £

[Here set out the name and description of each person whose  
claim is disputed, the amount of the claim, and the goods, work,  
or other matter on the ground of which the claim is based.]

Unpaid claims allowed by the High Court to be paid after the  
proper time or in respect of which application has been or is about  
to be made to the High Court.

By M.O. for . . . . . £

[Here state the name and description of each person to whom any  
such claim is due, and the amount of the claim, and the goods,  
work, and labour or other matter on account of which the claim is  
due.]

(Signed) A.B.

## PART II.—FORM OF DECLARATION AS TO EXPENSES.

*Form for Candidate where declared a Candidate or nominated in his  
absence and taking no part in the Election.*

I, , having been nominated [or having been declared by others]  
in my absence [to be] a candidate at the election for the county [or  
borough] of held on the day of , do hereby solemnly  
and sincerely declare that I have taken no part whatever in the said  
election.

And I further solemnly and sincerely declare that [or with the exception  
of ] I have not, and no person, club, society, or association at my  
expense has, made any payment or given, promised, or offered, any  
reward, office, employment, or valuable consideration, or incurred any  
liability on account of or in respect of the conduct or management of the  
said election.

And I further solemnly and sincerely declare that [or with the exception  
of ] I have not paid any money or given any security or equivalent  
for money to the person acting as my election agent at the said election, or  
to any other person, club, society, or association on account of or in  
respect of the conduct or management of the said election, and that [or  
with the exception of ] I am entirely ignorant of any money  
security or equivalent for money having been paid, advanced, given, or  
deposited by anyone for the purpose of defraying any expenses incurred  
on account of or in respect of the conduct or management of the said  
election.

And I further solemnly and sincerely declare that I will not, except so  
far as I may be permitted by law, at any future time make or be party  
to the making or giving of any payment, reward, office, employment, or  
valuable consideration for the purpose of defraying any such expenses  
as last mentioned, or provide or be party to the providing of any money,  
security, or equivalent of money for the purpose of defraying any such  
expenses.

Signature of declarant C.D.

Signed and declared by the above-named declarant on the day  
of , before me.

(Signed) E.F.

Justice of the Peace for



## THIRD SCHEDULE.

## CORRUPT PRACTICES PREVENTION ACT.

Session and Chapter.	Title of Act.	Enactments referred to as being the Corrupt Practices Prevention Acts.
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## PART I.—TEMPORARY.

17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	The whole Act so far as unrepealed.
26 & 27 Vict. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The whole Act so far as unrepealed.
31 & 32 Vict. c. 125.	The Parliamentary Elections Act, 1868.	The whole Act so far as unrepealed.
35 & 36 Vict. c. 33.	The Ballot Act, 1872 . . . .	Part III. so far as unrepealed.
42 & 43 Vict. c. 75.	The Parliamentary Elections and Corrupt Practices Act, 1879.	The whole Act so far as unrepealed.

## PART II.—PERMANENT.

30 & 31 Vict. c. 102.	The Representation of the People Act, 1867.	Sections eleven, forty-nine, and fifty.
31 & 32 Vict. c. 48.	The Representation of the People (Scotland) Act, 1868.	Sections eight and forty-nine.
31 & 32 Vict. c. 49.	The Representation of the People (Ireland) Act, 1868.	Sections eight and thirteen.
44 & 45 Vict. c. 40.	The Universities Elections Amendment (Scotland) Act, 1881.	Sub-section seventeen of section two.

PART III.—ENACTMENTS DEFINING THE OFFENCES OF BRIBERY AND PERSONATION.<sup>19</sup>

The Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102, ss. 2, 3).

*Bribery defined.*

Sect. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:—

- (1.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election:
- (2.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other

<sup>19</sup> See pp. 91, 136, *supra*.

person in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election :

- (3.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
- (4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
- (5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election. Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

*Bribery further defined.*

Sect. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :—

- (1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election :
- (2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 49.

*Corrupt payment of rates to be punishable as bribery.*

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly ; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 49.

*Corrupt payment of rates to be punishable as bribery.*

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on

behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made shall also be guilty of bribery, and punishable accordingly.

Universities Elections Amendment (Scotland) Act, 1881 (44 & 45 Vict. c. 40), s. 2.

*Corrupt payment of registration fee to be punishable as bribery.*

17. Any person, either directly or indirectly, corruptly paying any fee for the purpose of enabling any person to be registered as a member of the general council, and thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying such fee on behalf of any person for the purpose of inducing him to vote or to refrain from voting shall be guilty of bribery, and shall be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24.

*Personation defined.*

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

#### FOURTH SCHEDULE.

##### SHORT TITLES.

Session and Chapter.	Long Title.	Short Title.
15 & 16 Vict. c. 57.	An Act to provide for more effectual inquiry into the existence of corrupt practices at the election of members to serve in Parliament.	The Election Commissioners Act, 1852.
26 & 27 Vict. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The Corrupt Practices Prevention Act, 1863.



## BANKRUPTCY ACT, 1883.

46 &amp; 47 VICT. c. 52.

*Disqualifications of bankrupt.*

**32.**—(1.) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for— . . .

(b) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof.<sup>20</sup>

(2.) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when,—

(a) the adjudication of bankruptcy against him is annulled; or

(b) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.<sup>20</sup>

(3.) The disqualifications imposed by this section shall extend to all parts of the United Kingdom.<sup>20</sup>

*Vacating of seat in House of Commons.*

**33.**—(1.) If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall be vacant.<sup>21</sup>

*Certificate to Speaker of the House of Commons under sect. 33.  
(Title.)*

In the matter of the said A.B., of                      , a bankrupt.

It is hereby certified by this court to the right honourable the Speaker of the House of Commons that the said A.B. being a member of the Commons House of Parliament, was by an order made by this Court on the                      day of                      , 19                      , adjudged a bankrupt. And that although six months have expired since the date of the said order of adjudication was made, the said order of adjudication hath not been annulled, nor have the debts of the creditors who proved debts under the bankruptcy been fully paid or satisfied.

Certified under the seal of the Court this                      day of                      19                       
By the Court,  
Registrar.

(2.) Where the seat of a member so becomes vacant, the Speaker, during a recess of the House, whether by prorogation or by adjournment, shall forthwith, after receiving the certificate, cause notice thereof to be published in the London Gazette; and after the expiration of six days after the publication shall (unless the House has met before that day, or will meet on the day of the issue), issue his warrant to the Clerk of the

<sup>20</sup> See pp. 1, 9, *supra*.

<sup>21</sup> See p. 10, *supra*.

Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.<sup>22</sup>

(3.) The powers of the Act of the twenty-fourth year of the reign of King George the Third, chapter twenty-six, "to repeal so much of two Acts made in the tenth and fifteenth years of the reign of His present Majesty as authorises the Speaker of the House of Commons to issue his warrant to the Clerk of the Crown for making out writs for the election of members to serve in Parliament in the manner therein mentioned; and for substituting other provisions for the like purposes," so far as those powers enable the Speaker to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of Speaker or during his absence out of the realm, shall extend to enable him to make the like nomination and appointment for issuing warrants, under the like circumstances and conditions, for the election of a member in the room of any member whose seat becomes vacant under this Act.

*Officers.—Disabilities of officers.*

**116.**—(1.) No registrar or other officer attached to any court having jurisdiction in bankruptcy shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons.<sup>23</sup>

*Construction of former Acts, &c.—Construction of Acts mentioning commission of bankruptcy, &c.*

**149.** . . . (2.) Where by any Act or instrument, reference is made to the Bankruptcy Act, 1869, the Act or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Act.

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MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.<sup>24</sup>

47 & 48 VICT. c. 70.

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. [14th August 1884.]

*Corrupt practices.*

**2.** . . . (2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.<sup>25</sup>

*Incapacity of candidate reported guilty of corrupt practice.*

**3.**—(1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the

<sup>22</sup> See pp. 9, 10, *supra*.

<sup>23</sup> See p. 5, *supra*.

<sup>24</sup> See pp. 160 *et seq.*

<sup>25</sup> See pp. 5, 6, 47, *supra*.

report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.<sup>26</sup>

*Punishment on conviction of illegal practice.*

7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the borough in which the illegal practice has been committed.<sup>27</sup>

*Incapacity of candidate reported guilty of illegal practice.*

8.—(1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

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<sup>26</sup> See p. 6, *supra*.

<sup>27</sup> See p. 47, *supra*.



## ELECTIONS (HOURS OF POLL) ACT, 1885.

48 VICT. c. 10.

An Act to extend the Hours of Polling at Parliamentary and Municipal Elections. [28th April 1885.]

*Hours of polling.*

1. At every parliamentary and every municipal election within the meaning of this Act, the poll (if any) shall commence at eight o'clock in the forenoon, and be kept open till eight o'clock in the afternoon of the same day and no longer.<sup>28</sup>

*Definitions.*

2. In this Act—

The expression “parliamentary election” means an election for a county, city, borough, place, or combination of counties, cities, boroughs, and places (not being any university or universities), which returns any knight of the shire or member to serve in Parliament, and where the same is divided for the purpose of such return includes an election for such division:

The expression “municipal election” means an election of a councillor, commissioner of police, or auditor, or (in Ireland) an alderman or any commissioner, in any municipal borough or in any ward thereof:

The expression “municipal borough” means,—

As regards England, a borough subject to the Municipal Corporations Act, 1882; and

As regards Scotland, a burgh or town which has a town council or police commissioners; and

As regards Ireland, a borough subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled “An Act for the Regulation of Municipal Corporations in Ireland,” and the Acts amending the same, and includes a place subject to the Act of the ninth year of the reign of King George the Fourth, chapter eighty-two, or the Towns Improvement (Ireland) Act, 1854, or to any local Act providing for the election of commissioners in any town or place for purposes similar to the purposes of the above-mentioned Acts.

*Repeal of 41 & 42 Vict. c. 4, and 47 & 48 Vict. c. 34.*

3. Upon this Act coming into operation the Parliamentary Elections (Metropolis) Act, 1878, and the Elections (Hours of Poll) Act, 1884, shall be repealed, without prejudice to anything previously done in pursuance thereof.

*Short title.*

4. This Act may be cited as the Elections (Hours of Poll) Act, 1885.

*Commencement of Act.*

5. This Act shall come into operation at this end of the present Parliament.

<sup>28</sup> See p. 22, *supra*.

## REGISTRATION ACT, 1885.

48 &amp; 49 VICT. C. 15.

*Definitions.*

The expression "Parliamentary Registration Acts" means the Parliamentary Registration Act, 1843, and the Parliamentary and Municipal Registration Act, 1878, inclusive of any Acts and enactments amending the said Acts, or otherwise relating to revising barristers or to the registration of voters, and of any Acts and enactments relating to rating in so far as they are auxiliary to or deal with the registration of voters.

The expression "parliamentary county" means a county returning a member or members to serve in Parliament, and where a county is divided for the purpose of such return means a division of such county.

The expression "court of county quarter sessions" means the justices in general or quarter sessions assembled for any county at large, or riding, or parts of a county at large having a separate commission of the peace and a separate court of quarter sessions, and includes the justices in general or quarter sessions assembled for the Isle of Ely.

The expression "county quarter sessional area" means the area of the jurisdiction as extended by this Act of any court of county quarter sessions, and includes the Isle of Ely; and save as aforesaid, for the purposes of this Act every liberty, county of a city, or county of a town which for the purposes of parliamentary elections forms part of any county at large, riding, or parts shall be deemed to be within the jurisdiction of the court of county quarter sessions and clerk of the peace of such county at large, riding, or parts.

The expression "clerk of the peace for a county quarter sessional area" means the clerk of the peace for such county at large, riding, or parts as aforesaid, and includes the clerk of the peace for the Isle of Ely.

Other expressions in this Act have, unless the context otherwise requires, the same meaning as in the Parliamentary Registration Acts.

*Extent and short title of Act.*

**20.** This Act shall not apply to Scotland or Ireland, and may be cited for all purposes as the Registration Act, 1885.

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## PARLIAMENTARY ELECTIONS CORRUPT PRACTICES ACT, 1885.

48 &amp; 49 VICT. c. 56.

An Act to amend the Law with respect to Corrupt Practices at Parliamentary Elections. [6th August 1885.]

*Conditions on which employer may give leave of absence to employés to record their votes.*

1. Nothing in the law relating to Parliamentary elections shall make it illegal for an employer to permit Parliamentary electors in his employment to absent themselves from such employment for a reasonable time for the purpose of voting at the poll at a Parliamentary election, without having any deduction from their salaries or wages on account of such absence, if such permission is, so far as is practicable without injury to the business of the employer, given equally to all persons alike who are at the time in his employment, and if such permission is not given with a view of inducing any person to record his vote for any particular candidate at such election, and is not refused to any person for the purpose of preventing such person from recording his vote for any particular candidate at such election.<sup>30</sup>

*Construction of Act.*

2. This Act shall not be construed to make illegal any act which would not have been illegal if this Act had not passed.

*Short title.*

3. This Act may be cited as the Parliamentary Elections Corrupt Practices Act, 1885.

## LUNACY (VACATING OF SEATS) ACT, 1886.

49 VICT. c. 16.

An Act to amend the Law in regard to the Vacating of Seats in the House of Commons. [10th May 1886.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

*Short title of Act.*

1. This Act may for all purposes be cited as the Lunacy (Vacating of Seats) Act, 1886.

<sup>30</sup> See p. 103, *supra*.



*Procedure for vacating seat of member of House of Commons received, &c. as a lunatic into an asylum, &c.*

2. From and after the passing of this Act, if a member of the House of Commons is received, or committed into, or detained in any asylum, house, or other place as a lunatic the following provisions shall have effect; that is to say,

- (i.) It shall be the duty of the court, judge, magistrate, or person under or upon whose order, and of every medical person or practitioner upon whose certificate, such member has been so received, committed, or detained, and of every superintendent, officer, proprietor, or other person having the chief charge of such asylum, house, or other place as aforesaid, as soon as may be, to certify such reception, committal, or detention to the Speaker of the House of Commons.
- (ii.) It shall be lawful for any two members of the House of Commons to certify to the Speaker that they are credibly informed of such reception, committal, or detention.
- (iii.) The Speaker shall forthwith transmit such certificate or certificates, as the case may be, if the place of such reception, committal, or detention is in England, to the Commissioners in Lunacy in England; if such place is in Scotland, to the Board of Commissioners in Lunacy in Scotland; and if such place is in Ireland, to the Inspectors of Lunatic Asylums in Ireland.
- (iv.) On receiving such certificate or certificates, as the case may be, the Commissioners of Lunacy in England, the Board of Commissioners in Lunacy in Scotland, or the Inspectors of Lunatic Asylums in Ireland, or any two of them, as the case may be, shall, without delay, visit and examine the member to whom the certificate relates, and shall report to the Speaker whether he is of unsound mind.
- (v.) If the report is to the effect that the member is of unsound mind, the Speaker shall, at the expiration of six months from the date of the said report, if the House of Commons be then sitting, and if not, then as soon as may be after the next sitting thereof, require the Commissioners in Lunacy in England, or the Board of Commissioners in Lunacy in Scotland, or the Inspectors of Lunatic Asylums in Ireland or any two of them, as the case may be, again to visit and examine the member aforesaid; and if they shall report that he is still of unsound mind, the Speaker shall forthwith lay both reports on the table of the House of Commons, and thereupon the seat of the member shall be vacant.
- (vi.) Where the seat of a member so becomes vacant, the Speaker shall issue his warrant to the Clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.

#### *Penalty.*

3. Every medical person or practitioner, and every superintendent, officer, proprietor, or other person, having the chief charge of an asylum, house, or other place, who shall wilfully contravene or disobey the provisions of this Act shall be liable to a penalty not exceeding one hundred pounds, to be recovered with costs at the suit of any person in Her

Majesty's High Court of Justice in England or Ireland, or in the Court of Session in Scotland, as the case may be.

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POLICE DISABILITIES REMOVAL ACT, 1887.<sup>1</sup>

50 & 51 VICT. c. 9.

An Act to remove the Disabilities of the Police to vote at Parliamentary Elections. [23rd May. 1887.]

*Constable on duty to be entitled to vote at any polling station.*

2. Where a constable is or is likely to be, on the day of any election, sent or employed in the discharge of his duty so as to prevent him voting at the polling booth or station at which he would otherwise be entitled by law to vote, the following enactments shall have effect:—

- (1.) Such constable may, at any time within seven days before the election, apply to the chief constable for a certificate, and the chief constable shall thereupon give a certificate under his hand, stating the name of the constable, his number in the police force, his number and description on the register of voters, and the fact that he is so sent or employed;
- (2.) The presiding officer at any polling booth or station shall, on production by such constable of the said certificate, allow him to vote at that booth or station, and shall forthwith cancel the said certificate, and deal with the same in like manner as the counterfoils of voting papers are directed by law to be dealt with;
- (3.) No such constable shall, under this section, be entitled to vote at any election at which he would not, but for this section, be entitled to vote, nor more than once in any election, and if he so votes, or attempts to vote, he shall be subject to all the penalties imposed by law on a person personating or attempting to personate a voter at such election;
- (4.) In this section,—
  - (a.) "Constable" includes any person belonging to a police force;
  - (b.) "Chief constable" includes an assistant chief constable, a commissioner or assistant commissioner of police, a head constable, and any other person for the time being in command of a police force, or acting in that capacity;
  - (c.) "Register of voters" has the same meaning as in the Ballot Act, 1872.

*Amendment of section 9 of 19 & 20 Vict. c. 2.*

4. Section nine of the Act, nineteen and twenty Victoria, chapter two, shall be read and construed as if for the word "therein," were substituted the words "in certain elections of members to serve in Parliament."

*Saving as to section 8 of 17 & 18 Vict. c. 102.*

5. Provided always, that this Act shall not operate to extend the benefit of the eighth section of the Corrupt Practices Prevention Act, 1854, to any person becoming entitled to vote by virtue of this Act.

<sup>1</sup> See p. 49, *supra*.

*Short title.*

6. This Act may be cited as the Police Disabilities Removal Act, 1887.

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SHERIFFS ACT, 1887.

50 & 51 VICT. c. 55.

An Act to consolidate the Law relating to the office of Sheriff in England, and to repeal certain enactments relating to Sheriffs which have ceased to be in force or have become unnecessary. [16th September, 1887.]

*Preliminary.—Short title.*

1. This Act may be cited as the Sheriffs Act, 1887.

*Extent of Act.*

2. This Act shall not extend to Scotland or Ireland.

*Appointment and qualification.—Annual appointment of sheriff and duration of office.*

- 3.—(1.) A sheriff shall be annually appointed for every county.

(2.) Save as provided by this Act, a sheriff shall not hold office for more than one year, and a grant after the passing of this Act of the office for more than one year shall be void.

(3.) The office of sheriff or of any officer of a sheriff shall not become void by reason of the demise of the Crown, or in Cornwall of the Duchy of Cornwall, but the person holding the office shall, unless sooner removed or superseded, continue in office for the remainder of his term, in like manner as if such demise had not taken place.

*Duration of office.*

- 7.—(2.) Every sheriff shall continue to be and act as sheriff until his successor has made the said declaration and entered upon office.

*Holding of courts.*

18.—(1.) A sheriff shall not be bound to hold a county court except where the holding of such court is required for the purpose of an election or of the due execution of some writ or for any other specific purpose, in which case he shall hold a court at the time fixed for such purpose by law or by such writ, or if no time is so fixed, as soon as is reasonably practicable after he is informed of the necessity for holding such court, or receives such writ, and where more than one court is required to be held for any such purpose, he shall hold courts at intervals not exceeding one month from each other.

(2.) A sheriff's county court shall be held at the place heretofore appointed or authorised by law, or at such other place as the sheriff may from time to time fix with the consent of the authority having for the time being power to divide the county into polling districts for the purpose of Parliamentary elections.<sup>2</sup>

<sup>2</sup> This subsection is repealed as regards sheriffs courts required for the purpose of elections. See s. 47 (1) and Eighth Sched. of R. P. Act, 1918.



*Under-sheriff and officers.—Obligation to appoint under-sheriff, and declaration of office by under-sheriff.*

23.—(1.) Every sheriff shall within one month after the notification of his appointment in the London Gazette by writing under his hand appoint some fit person to be his under-sheriff, and shall transmit a duplicate of such written appointment to the clerk of the peace for the county, which shall be filed by him among the records of his office.<sup>1</sup>

*Obligation to appoint deputy resident in London.*

24. Every sheriff shall appoint a sufficient deputy, who shall be resident or have an office within one mile from the Inner Temple Hall, for the receipt of writs, the granting of warrants thereon, the making of returns thereto, and the acceptance of all rules and orders to be made on or touching the execution of any process or writ to be directed to such sheriff.

*Execution of office by under-sheriff on death or suspension of sheriff.*

25.—(1.) Where the sheriff of a county dies before the expiration of his year of office or before he is lawfully superseded, the under-sheriff by him appointed shall nevertheless continue in office and shall until another sheriff be appointed for the said county and has made the declaration of office, execute the office of sheriff, in the name of the deceased sheriff, and be answerable for the execution of the said office as the deceased sheriff would by law have been if living; and the security given to the sheriff so deceased by the said under-sheriff and his pledges shall remain and be a security to the Crown and to all persons whomsoever for such under-sheriff's due execution of the offices of sheriff and under-sheriff.<sup>3</sup>

(2.) When it becomes the duty of an under-sheriff to act as sheriff under the provisions of this section he may by writing under his hand appoint a deputy.

*Application of Act to sheriffs of counties of cities and counties of towns.*

36.—(1.) The sheriff of a county of a city or a county of a town other than London shall continue to be appointed in manner provided by the Municipal Corporations Act, 1882, and shall hold office for the term in that Act mentioned, and in the event of the death or incapacity of a sheriff so appointed, the council of the said city or town shall forthwith appoint another fit person to execute the office.<sup>3</sup>

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COUNTY COURTS ACT, 1888.

51 & 52 VICT. c. 43.

PART II.—JUDGES AND OFFICERS.

*Appointment and qualification of judges.*

8. The Lord Chancellor shall from time to time appoint as many fit persons, not exceeding sixty, as are needed to be judges of the courts under this Act, each of whom shall be a barrister-at-law of at least seven years' standing: Provided that where the whole of a district is within the duchy of Lancaster the appointment of the judge for such district shall be made by the chancellor of the said duchy. No judge shall during his continuance in the office of judge be capable of being elected or of sitting as a member of the House of Commons.<sup>4</sup>

<sup>3</sup> See p. 12, *supra*.

<sup>4</sup> See p. 4, *supra*.

## BANKRUPTCY ACT, 1890.

53 &amp; 54 VICT. c. 71.

*Disqualification of bankrupt.*

9. No disqualification arising by virtue of section thirty-two of the principal Act shall exceed a period of five years from the date of any discharge which may have been, or may hereafter be, granted under and by virtue of the principal Act, or of this Act. It is hereby declared that the disqualifications arising by virtue of the said section include disqualification for being elected to, or holding or executing the office of, a member of a county council.<sup>5</sup>

## SUPREME COURT OF JUDICATURE (PROCEDURE) ACT, 1894.

57 &amp; 58 VICT. c. 16.

An Act to amend the Supreme Court of Judicature Acts. [3rd July 1894.]

*Appeals.—Regulations as to appeals.*

- 1.—(1.) No appeal shall lie— . . .
- (b) without the leave of the Judge, or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a judge, except . . .
- (ii.) cases of granting or refusing an injunction. . . .
- (vi.) such other cases, to be prescribed by rules of court, as may in the opinion of the authority for making such rules be of the nature of final decisions.
- (4.) In matters of practice and procedure every appeal from a judge shall be to the Court of Appeal.<sup>6</sup>

## CORRUPT AND ILLEGAL PRACTICES PREVENTION ACT, 1895.

58 &amp; 59 VICT. c. 40.

*Certain false statements concerning a candidate to be an illegal practice.*

1. Any person who, or the directors of any body or association corporate which, before or during any Parliamentary election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any false statement of fact in relation to the personal character or conduct of such candidate shall be guilty of an illegal practice within the meaning of the provisions of the Corrupt and Illegal Practices Prevention Act, 1883, and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein.<sup>7</sup>

*Evidence on hearing of charge under the Act.*

2. No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing, and did believe, the statement made by him to be true.<sup>8</sup>

<sup>5</sup> See pp. 1, 9, *supra*.

<sup>6</sup> See rule 44 of the Election Petition Rules, p. 363, *infra*; *Harmon v. Park* (1881), 6 Q. B. D. 323. *Cf. Pope v.*

*Banton* (1900), 17 T. L. R. 182.

<sup>7</sup> See pp. 144, 145, *supra*.

<sup>8</sup> See p. 168, *supra*.

Any person charged with an offence under this Act, and the husband or wife of such person, as the case may be, shall be competent to give evidence in answer to such charge.

*Injunction against person making false statement.*

3. Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and for the purpose of granting an interim injunction *prima facie* proof of the falsity of the statement shall be sufficient.<sup>9</sup>

*Candidate exonerated in certain cases of illegal practice by agents.*

4. A candidate shall not be liable, nor shall be subject to any incapacity, nor shall his election be avoided, for any illegal practice under this Act committed by his agent other than his election agent, unless it can be shown that the candidate or his election agent has authorised or consented to the committing of such illegal practice by such other agent, or has paid for the circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court shall find and report that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statements.<sup>10</sup>

*Short title.*

5. This Act may be cited as the Corrupt and Illegal Practices Prevention Act, 1895, and shall be construed as one with the Corrupt and Illegal Practices Prevention Act, 1883, and that Act and this Act may be cited together as the Corrupt and Illegal Practices Prevention Acts, 1883 and 1895.

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CRIMINAL EVIDENCE ACT, 1898.

61 & 62 VICT. C. 36.

*Competency of witnesses in criminal cases.*

1. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. Provided as follows:—

- (a.) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application:
- (b.) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution:
- (c.) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged:
- (d.) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage:

<sup>9</sup> See p. 168, *supra*.

<sup>10</sup> See p. 169, *supra*.



- (e.) A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged :
- (f.) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that where-with he is then charged, or is of bad character, unless—
  - (i.) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
  - (ii.) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
  - (iii.) he has given evidence against any other person charged with the same offence.
- (g.) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence :
- (h.) Nothing in this Act shall affect the provisions of section eighteen of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

*Evidence of person charged.*

2. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

*Right of reply.*

3. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

*Provision as to previous Acts.*

6.—(1.) This Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act, except that nothing in this Act shall affect the Evidence Act, 1877.

(2.) But this Act shall not apply to proceedings in courts martial unless so applied—

- (a.) as to courts martial under the Naval Discipline Act, by general orders made in pursuance of section sixty-five of that Act; and
- (b.) as to courts martial under the Army Act by rules made in pursuance of section seventy of that Act.

*Extent, commencement, and short title.*

7.—(1.) This Act shall not extend to Ireland.

(2.) This Act shall come into operation on the expiration of two months from the passing thereof.

(3.) This Act may be cited as the Criminal Evidence Act, 1898.

## PUBLIC MEETING ACT, 1908.

8 EDW. 7, c. 66.

1.—(1.) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a member of Parliament for such constituency and the date at which a return of such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

(2.) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

2. This Act may be cited as the Public Meeting Act, 1908.

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## REPRESENTATION OF THE PEOPLE ACTS, 1918 TO 1921.

[These Acts are set out and fully dealt with in the author's book bearing that title.]

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## REPRESENTATION OF THE PEOPLE (No. 2) ACT, 1922.

12 &amp; 13 GEO. 5, c. 41.

1. The following sub-section shall be inserted at the end of section thirty-four of the Representation of the People Act, 1918 (which provides that any unauthorised person who incurs expenses for the purpose of promoting or procuring the election of any candidate at a parliamentary election shall be guilty of a corrupt practice):—

“(4.) Where the person guilty of an offence against this section is a body of persons corporate or unincorporate, every director or officer of that body shall, unless he proves that the act constituting the offence was committed without his knowledge or consent, be guilty of the like offence.”

2.—(1.) This Act may be cited as the Representation of the People (No. 2) Act, 1922, and shall be included among the Acts which may be cited as the Representation of the People Acts, 1918 to 1922.

(2.) This Act shall not apply to any part of Ireland other than Northern Ireland, and in its application to Northern Ireland shall, for the purposes of sections six and fifteen of the Government of Ireland Act, 1920, be deemed to be an Act passed before the appointed day.

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## APPENDIX III.

PARLIAMENTARY ELECTION PETITION RULES.<sup>1</sup>

MICHAELMAS TERM, 1868.

*General Rules made by Sir Samuel Martin, Knight, one of the Barons of the Exchequer; Sir James Shaw Willes, Knight, one of the Justices of the Common Pleas; and Sir Colin Blackburn, Knight, one of the Justices of the Queen's Bench; the Judges for the time being for the trial of Election Petitions in England, pursuant to the Parliamentary Elections Act, 1868.*

I. The presentation of an Election Petition shall be made by leaving it at the office of the Master nominated by the Chief Justice of the Common Pleas,<sup>2</sup> and such Master or his Clerk shall (if required) give a receipt which may be in the following form:—

Received on the       day of       at the Master's office, a Petition touching the Election of A.B., a Member for       , purporting to be signed by [*insert the names of the Petitioners*].

C.D., *Master's Clerk.*

With the Petition shall also be left a copy thereof for the Master to send to the Returning Officer, pursuant to Section 7 of the Act.

II. An Election Petition shall contain the following statements:—

(1.) It shall state the right of the Petitioner to petition within section 5 of the Act.

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III. The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this rule, unless otherwise ordered by the Court or a Judge.

IV. The Petition shall conclude with a Prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the Petitioners.

V. The following form, or one to the like effect, shall be sufficient:—

In the Common Pleas.<sup>3</sup>

The Parliamentary Elections Act, 1868.

Election for [*state the place*] holden on the       day of       A.D.

The Petition of A., of       [*or of A., of       , and B., of       , as the case may be*] whose names are subscribed.

(1.) Your Petitioner A. is a person who voted [*or had a right to vote, as the case may be*] at the above election [*or claims to have had a right to be returned at the above election, or was a candidate at the above election*]; and your Petitioner B. [*here state in like manner the right of each Petitioner*].

<sup>1</sup> The power to make, vary or revoke rules relating to parliamentary election petitions is now vested in the Rule Committee of the Supreme Court. See Corrupt and Illegal P. P. Act, s. 56 (2), and Judicature Act (Rule Committee),

1909.

<sup>2</sup> At the present day, the Lord Chief Justice of England.

<sup>3</sup> At the present day, in the High Court of Justice, King's Bench Division.



(2.) And your Petitioners state that the election was holden on the day of <sup>A.D.</sup> when A.B., C.D., and E.F. were candidates, and the Returning Officer has returned A.B. and C.D. as being duly elected.

(3.) And your Petitioners say that [*here state the facts and grounds on which the Petitioners rely*].

Wherefore your Petitioners pray that it may be determined that the said A.B. was not duly elected or returned, and that the election was void [*or that the said E.F. was duly elected and ought to have been returned, or as the case may be*].

(Signed)

A.  
B.

VI. Evidence need not be stated in the Petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas,<sup>4</sup> and upon such terms as to costs and otherwise as may be ordered.

VII. When a Petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the Petitioners and Respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court or Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

VIII. When the Respondent in a Petition under the Act, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 53rd section of the Act, such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the Petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a Respondent of any objection to the election not specified in the list, except by leave of the Court or Judge, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

IX. With the Petition Petitioners shall leave at the office of the Master a writing signed by them or on their behalf, giving the name of some person entitled to practise as an Attorney or Agent in cases of Election Petitions whom they authorise to act as their Agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

X. Any person returned as a Member may at any time after he is returned send or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as an Attorney or Agent in cases of Election Petitions to act as his Agent in case there should be a Petition against him, or stating that he intends to act for himself, and in either case giving an address, within three miles from the General Post Office, at which notices may be left, and in default of such writing being left in a week after service of the Petition, notices

<sup>4</sup> At the present day, the King's Justice. Bench Division of the High Court of

and proceedings may be given and served respectively by sticking up the same at the Master's office.

XI. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of Agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII. The Master shall upon the presentation of the Petition forthwith send a copy of the Petition to the Returning Officer, pursuant to Section 7 of the Act, and shall therewith send the name of the Petitioner's Agent, if any, and of the address, if any, given as prescribed, and also of the name of the Respondent's Agent, and the address, if any, given as prescribed, and the Returning Officer shall forthwith publish those particulars along with the Petition.

The cost of publication of this and any other matter required to be published by the Returning Officer shall be paid by the Petitioner or person moving in the matter, and shall form part of the general costs of the Petition.

XIII. The time for giving notice of the presentation of a Petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

XIV. Where the respondent has named an agent or given an address, the service of an Election Petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the Respondent, unless a Judge, on an application made to him not later than five days after the Petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the Respondent, including, when practicable, service upon an agent for election expenses, in which case the Judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

XV. In case of evasion of service the sticking up a notice in the office of the Master of the Petition having been presented, stating the Petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a Judge.

XVI. The deposit of money by way of security for payment of costs, charges, and expenses payable by the Petitioner shall be made by payment into the Bank of England to an account to be opened there by the description of "The Parliamentary Elections Act, 1868, Security Fund," which shall be vested in and drawn upon from time to time by the Chief Justice of the Common Pleas<sup>5</sup> for the time being, for the purposes for which security is required by the said Act, and a Bank receipt or certificate for the same shall be forthwith left at the Master's office.

XVII. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the Petition to which it is applicable.

XVIII. The recognisance as security for costs may be acknowledged before a Judge at Chambers or the Master in town, or a Justice of the Peace in the country.

There may be one recognisance acknowledged by all the sureties, or separate recognisances by one or more, as may be convenient.

XIX. The recognisance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the       day of       in the Year of our Lord, 18   , before me [*name and description*] came A.B., of [*name and description as above prescribed*] and acknowledged himself [*or severally acknow-*

<sup>5</sup> At the present day, the Lord Chief Justice of England.



*ledged themselves*] to owe to our Sovereign Lady the Queen the sum of one thousand pounds [*or the following sums*] (that is to say) the said C.D., the sum of £ , the said E.F., the sum of £ , the said G.H., the sum of £ , and the said J.K., the sum of £ , to be levied on his [*or their respective*] goods and chattels, land and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognisance is that if [*here insert the names of all the Petitioners, and if more than one, add, or any of them*] shall well and truly pay all costs, charges, and expenses in respect of the Election Petition signed by him [*or them*], relating to the [*here insert the name of the borough, or county*] which shall become payable by the said Petitioner [*or Petitioners, or any of them*] under the Parliamentary Elections Act, 1868, to any person or persons, then this recognisance to be void, otherwise to stand in full force.

(Signed)

[*Signatures of Sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the day of at before me,

C.D.,

A Justice of the Peace [*or as the case may be*].

XX. The recognisance or recognisances shall be left at the Master's office by or on behalf of the Petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

XXI. The time for giving notice of any objection to a recognisance under the 8th section of the Act shall be within five days from the date of service of the notice of the Petition and of the nature of the security, exclusive of the day of service.

XXII. An objection to the recognisance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognisance has not duly acknowledged the same.

XXIII. Any objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a Judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXIV. Such hearing and decision may be either upon affidavit or personal examination of witnesses or both, as the Master or Judge may think fit.

XXV. If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 9th section of the said Act, and the Petition shall be at issue.

XXVI. If by order made upon such summons an objection be allowed and the security be declared insufficient, the Master or Judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXVII. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or Judge, and in default of such order shall form part of the general costs of the Petition.

XXVIII. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties shall be paid by the Petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognisance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a Justice of the Peace, which affidavit any Justice of the Peace is hereby authorised to take, or before some person authorised to take affidavits in



the Court of Common Pleas<sup>6</sup> that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts of the clear value of the sum for which he is bound by his recognisance, which affidavit may be as follows:

In the Common Pleas.<sup>6</sup>  
Parliamentary Elections Act, 1868.

I, A.B., of [*as in recognisance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts of the clear value of . Sworn, &c.

XXIX. The order of the Master for payment of costs shall have the same force as an order made by a Judge, and may be made a rule of the Court of Common Pleas,<sup>6</sup> and enforced in like manner as a Judge's order.

XXX. The Master shall make out the Election List. In it he shall insert the names of the Agents of the Petitioners and Respondent, and the addresses to which notices may be sent, if any. The List may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Parliamentary Elections Act, 1868."

XXXI. The time and place of the trial of each Election Petition shall be fixed by the Judges on the rota, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by the post to the address given by the Petitioner, another to the address given by the Respondent, if any, and a copy by the post to the Sheriff, or in case of a Borough having a Mayor, to the Mayor of that Borough, fifteen days before the day appointed for the trial.

The Sheriff or Mayor, as the case may be, shall forthwith publish the same in the County or Borough.

XXXII. The sticking up of the notice of Trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any mis-carriage of, or relating to, the copy or copies thereof to be sent as already directed.

XXXIII. The notice of trial may be in the following form:—

Parliamentary Elections Act, 1868.

Election Petition of  
County [*or Borough*] of

Take notice that the above Petition [*or Petitions*] will be tried at  
on the       day of       and on such other subsequent days as may be  
needful.

Dated the       day of

Signed, By Order,  
A.B.,

The Master appointed under the above Act.

XXXIV. A Judge may from time to time, by order made upon the application of a party to the Petition, or by notice in such form as the Judge may direct to be sent to the Sheriff or Mayor, as the case may be, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the Sheriff or Mayor.<sup>7</sup>

XXXV. In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

<sup>6</sup> At the present day, the King's Bench Division of the High Court of Justice.

<sup>7</sup> An adjournment may be ordered where the particulars delivered are insufficient,—*Penryn*, 1 O. & H. 126;

*Bristol*, 2 *ib.* 27; or where it is sought to compel the attendance of a witness. *Galway*, 2 O. & H. 51; *Stroud*, 2 O. & H. 108; or to enable the withdrawal of a petition. *Hartlepool*, 19 L. T. 821.

XXXVI. No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another Judge.

XXXVII. The application to state a special case may be made by rule in the Court of Common Pleas<sup>a</sup> when sitting, or by a summons before a Judge at Chambers, upon hearing the parties.

XXXVIII. The title of the Court of Record held for the trial of an Election Petition may be as follows:—

“ Court for the trial of an Election Petition for the [County of        or Borough of        as may be] between        Petitioner, and        Respondent. And it shall be sufficient so to entitle all proceedings in that Court.

XXXIX. An officer shall be appointed for each Court for the trial of an Election Petition, who shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the Registrar of that Court. He by himself, or in case of need his sufficient deputy, shall perform all the functions incident to the officer of a Court of Record, and also such duties as may be prescribed to him.

XL. The reasonable costs of any witness shall be ascertained by the Registrar of the Court, and the certificate allowing them shall be under his hand.

XLI. The order of a Judge to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of an Election Petition for [complete the title of the Court] the        day of

To A.B. [describe the person].

You are hereby required to attend before the above Court at [place] on the        day of        at the hour of [or forthwith, as the case may be] to be examined as a witness in the matter of the said Petition, and to attend the said Court until your examination shall have been completed.

As witness my hand,

A.B.,

Judge of the said Court.

XLII. In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a Court holden on        at        for the trial of an Election Petition for the County [or Borough] of        before Sir Samuel Martin, Knight, one of the barons of Her Majesty's Court of Exchequer, and one of the Judges for the time being for the trial of Election Petitions in England,<sup>9</sup> pursuant to the Parliamentary Elections Act, 1868.

Whereas A.B. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof, the said Court does therefore sentence the said A.B. for his said contempt to be imprisoned in the

Gaol for        calendar months, and to pay to our Lady the Queen a fine of £       , and to be further imprisoned in the said gaol until the said fine be paid; and the Court further orders that the sheriff of the said county [or as the case may be] and all constables and officers of the peace of any county or place where the said A.B. may be found, shall take the said A.B. into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the Court further orders the said gaoler to receive

<sup>a</sup> At the present day, the King's Bench Division of the High Court of Justice.

<sup>9</sup> Now two Judges of the King's Bench Division of the High Court of Justice. See p. 224, *supra*.



the said A.B. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence

A.D.

Signed the                      day of

S.M.

XLIII. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the Superior Courts, as the case may be, and to all constables and officers of the peace of the county or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

XLIV. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under the Parliamentary Elections Act, 1868, as a Judge at Chambers in the ordinary proceedings of the Superior Courts, and such questions and matters shall be heard and disposed of by one of the Judges upon the rota, if practicable, and if not, then by any Judge at chambers.

XLV. Notice of an application for leave to withdraw a Petition shall be in writing and signed by the Petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Parliamentary Elections Act, 1868.

County [or borough] of                      Petition of [state Petitioners]  
presented                      day of

The Petitioner proposes to apply to withdraw his Petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this                      day of

(Signed)

XLVI. The notice of application for leave to withdraw shall be left at the Master's office.

XLVII. A copy of such notice of the intention of the Petitioner to apply for leave to withdraw his Petition shall be given by the Petitioner to the Respondent, and to the returning officer, who shall make it public in the county or borough to which it relates, and shall be forthwith published by the Petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice:—

Parliamentary Elections Act, 1868.

In the Election Petition for                      in which                      is Petitioner and  
Respondent.

Notice is hereby given, that the above Petitioner has on the                      day of                      lodged at the Master's office, notice of an application to withdraw the Petition, of which notice the following is a copy [*set it out*].

And take notice that by the rule made by the Judges any person who might have been a Petitioner in respect of the said elections, may within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a Petitioner.

(Signed)

XLVIII. Any person who might have been a Petitioner in respect of the election to which the Petition relates, may within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Master, of his intention to apply at the hearing to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

XLIX. The time and place for hearing the application shall be fixed by



a Judge, and whether before the Court of Common Pleas<sup>10</sup> or before a Judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as Petitioners, and otherwise in such manner and at such time as the Judge directs.

L. Notice of abatement of a Petition, by death of the Petitioner or surviving Petitioner, under Section 37 of the said Act, shall be given by the party or person interested in the same manner as notice of an application to withdraw a Petition, and the time within which application may be made to the Court or a Judge, by motion or summons at Chambers, to be substituted as a Petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the Court or a Judge may allow.

LI. If the Respondent dies or is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a Petitioner under the Act in respect of the election to which the Petition relates, may give notice of the fact in the county or borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the returning officer, and a like copy with the Master.

LII. The manner and time of the Respondent's giving notice to the Court that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the Master, signed by the respondent six days before the day appointed for trial, exclusive of the day of leaving such notice.

LIII. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the Petitioner or his agent, and to the Sheriff or Mayor, as the case may be, who shall cause the same to be published in the county or borough.

LIV. The time for applying to be admitted as a Respondent in either of the events mentioned in the 38th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or a Judge may allow.

LV. Costs shall be taxed by the Master, or at his request by any Master of a Superior Court, upon the rule of Court or Judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of Court ordering them to be paid; or, if payable by the order of a Judge, then by making such order a rule of Court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the Bank available for the purpose, then to the extent of such money by order of the Chief Justice of the Common Pleas<sup>11</sup> for the time being, upon a duplicate of the rule of Court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act, and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Common Pleas.<sup>12</sup>

LVI. The Master shall prepare and keep a roll properly headed for entering the names of all persons entitled to practise as Attorney or Agent in cases of Election Petitions, and all matters relating to elections before the Court and Judges, pursuant to the 57th section of the said Act, which

<sup>10</sup> At the present day, the King's Bench Division of the High Court of Justice.

<sup>11</sup> At the present day, the Lord Chief

Justice of England.

<sup>12</sup> At the present day, the King's Bench Division of the High Court of Justice.

roll shall be kept and dealt with in all respects as the roll of attorneys of the Court of Common Pleas,<sup>12</sup> and shall be under the control of that Court, as to striking off the roll and otherwise.

LVII. The entry upon the roll shall be written and subscribed by the attorney or agent or some attorney authorised by him in writing to sign on his behalf, who shall therein set forth the name, description, and address in full.

LVIII. The Master may allow any person upon the roll of attorneys for the time being, and during the present year any person whose name or the name of whose firm is in the law list of the present year as a parliamentary agent, to subscribe the roll, and permission to subscribe the roll may be granted to any other person by the Court or a Judge upon affidavit, showing the facts which entitle the applicant to practise as agent according to the principles, practice, and rules of the House of Commons in cases of Election Petitions.

LIX. An agent employed for the Petitioner or Respondent shall forthwith leave written notice at the office of the Master, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

LX. No proceeding under the Parliamentary Elections Act, 1868, shall be defeated by any formal objection.

LXI. Any rule made or to be made in pursuance of the Act, if made in term time shall be published by being read by the Master in the Court of Common Pleas,<sup>12</sup> and if made out of term by a copy thereof being put up at the Master's office.

Dated the 21st day of November, 1868.

SAMUEL MARTIN.	X
J. S. WILLES.	X
COLIN BLACKBURN.	X

*The Judges for the Trial of Election Petitions in England.*

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*Additional General Rule made by Sir Samuel Martin, Knight, one of the Barons of the Exchequer; Sir James Shaw Willes, Knight, one of the Justices of the Common Pleas; and Sir Colin Blackburn, Knight, one of the Justices of the Queen's Bench; the Judges, for the time being, for the trial of Election Petitions in England, pursuant to the Parliamentary Elections Act, 1868.*

That notice of the time and place of the trial of each Election Petition shall be transmitted by the Master to the Treasury, and to the Clerk of the Crown in Chancery; and that the Clerk of the Crown in Chancery shall, on or before the day fixed for the trial, deliver, or cause to be delivered, to the Registrar of the Judge who is to try the Petition, or his deputy, the poll books, for which the Registrar or his deputy shall give, if required, a receipt, and that the Registrar shall keep in safe custody the said poll books until the trial is over, and then return the same to the Crown Office.

Dated the 19th day of December, 1868.

SAMUEL MARTIN.	X
J. S. WILLES.	X
COLIN BLACKBURN.	X

*The Judges for the trial of Election Petitions in England.*

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*Additional General Rules made by the Judges for the time being for the trial of Election Petitions in England, pursuant to the Parliamentary Elections Act, 1868.*

I. All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by the Petitioners pursuant to the 16th General Rule, made the 21st of November, 1868, by the Judges for the trial of Election Petitions in England, shall be disposed of by the Court of Common Pleas<sup>13</sup> or a Judge.

II. Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court of Common Pleas<sup>13</sup> or order of a Judge.

III. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Court or Judge may require.

IV. The rule or order may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

V. Upon such rule or order being made, the amount may be drawn for by the Chief Justice of the Common Pleas<sup>14</sup> for the time being.

VI. The draft of the Chief Justice of the Common Pleas<sup>14</sup> for the time being shall, in all cases, be a sufficient warrant to the Bank of England for all payments made thereunder.

Dated the 25th day of March, 1869.

SAMUEL MARTIN. X

J. S. WILLES. X

COLIN BLACKBURN. X

*The Judges for the trial of Election Petitions in England.*

*Additional General Rules made by the Judges for the time being for the trial of Election Petitions in England, pursuant to the Parliamentary Elections Act, 1868, for the more effectual execution of the said Act.*

I. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the Registrar, stamped with the official seal. Such order and particular respectively shall be filed by the party obtaining the same.

II. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

III. The days mentioned in Rules 7 and 8, and in any rule of Court or Judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

IV. When the last day for presenting petitions, or filing lists of votes or objections, under Rules 7 and 8, or recognisances, or any other matter

<sup>13</sup> At the present day, the King's Bench Division of the High Court of Justice.

<sup>14</sup> At the present day, the Lord Chief Justice of England.



required to be filed within a given time, shall happen to fall on a holiday, the Petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

V. Rule 40 is hereby revoked, and in lieu thereof it is ordered that the amount to be paid to any witness whose expenses shall be allowed by the Judge shall be ascertained and certified by the Registrar; or in the event of his becoming incapacitated from giving such certificate, by the Judge.

VI. After receiving notice of the Petitioner's intention to apply for leave to withdraw, or of the Respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 38th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

Dated the 27th day of January, 1875.

G. PIGOTT.  
ROBT. LUSH.  
GEORGE E. HONYMAN.

*Judges for the time being on the rota for the trial of Election  
Petitions in England.*



## APPENDIX IV.

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In 1876 a Select Committee appointed by the House of Commons "to enquire into the working of the existing machinery of Parliamentary and Municipal Elections" unanimously recommended that the Home Office should forward to every returning officer the case and judgment in *Woodward v. Sarsons*.

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### CASE ARGUED AND DETERMINED IN THE COURT OF COMMON PLEAS.

19th and 21st June and 9th July, 1875.

WOODWARD (Petitioner) v. SARSONS and Another (Respondents).

*Municipal Election—Ballot Act, 1872 (35 & 36 Vict. c. 33)—Avoiding the Election—Want of Secrecy—Marking the Ballot Papers.*

Although a Parliamentary or municipal election will be void by the common law of Parliament, if it be so conducted that either there be no real electing by the constituency at all, or it be not really conducted under the subsisting election law, which is now an election by ballot, yet if there be no reasonable ground to believe that a majority of the electors may have been prevented from voting in favour of the candidate they preferred, and if the election be substantially an election by ballot, the election will not be void by the common law of Parliament, notwithstanding there may have been mistake or misconduct in the use of the machinery of the Ballot Act.

The 13th section of the Ballot Act, 1872 (35 & 36 Vict. c. 33), is only declaratory of what would have been the law applicable to elections under that Act if that section had not existed, and, therefore, to render an election invalid for the non-observance of the rules or forms of the Ballot Act, the non-observance must be so great as to amount to a conducting of the election contrary to the principle of an election by ballot, and be such that it either did or might have affected the result of the election.

The enactment in the 2nd section of the Ballot Act, 1872, as to the ballot paper being secretly marked by the voter, is an absolute enactment, and must, therefore, be obeyed strictly, but the manner in which the voter is to mark such paper is enacted only in the directory part of the statute, and therefore it is sufficient if it be obeyed substantially.

At a municipal election held under the Ballot Act, 1872, the presiding officer at one of the polling stations marked upon the face of every ballot paper which he gave out to each elector at such station the number of the voter appearing on the burgess roll. The number so marked was not, in fact, seen so as to be identified, but it could have been seen at the counting. At another of the polling stations the presiding officer placed each of the ballot papers, which he had marked by the direction of voters unable to read, in the ballot box, wrapped up in the declaration of inability to read made by the voter for whom the vote was marked, and each such vote could have been, but was not, in fact, identified at the counting. It appeared



that no voter had been prevented from voting, and that these errors of the presiding officers did not affect the result of the election, the majority of electors not being thereby prevented from effectually exercising their votes in favour of the candidate they preferred:—Held, that the election was, therefore, not void, either by the common law of Parliament or under the Ballot Act, 1872.

Held, also, that the ballot papers which had been so marked on their face, by the presiding officer, with the number of the voter, were void, and ought not to be counted, but that the ballot papers which had been wrapped in the declarations of inability to read, were not on that account to be rejected, but ought, properly, to be counted.

A ballot paper which bears the voter's signature is void, and must be disallowed; so, also, must be disallowed a ballot paper which has the name of the candidate written by the voter instead of a cross opposite to the printed name of the candidate. The mere fact of two crosses being put, or of the cross being of a peculiar form, or of there being another mark with the cross, or of there being a straight line instead of a cross, or of the cross being put on the left-hand side of the candidate's name instead of on the right-hand side, will not vitiate the ballot paper, and the same should not be rejected on that account unless there be evidence of an arrangement that such peculiar marks were to be indications of identity.

A petition was presented under the Corrupt Practices Municipal Elections Act, 1872, against the election of the respondent, Henry Sarsons, as town councillor for Nechells Ward, in the borough of Birmingham, and the questions raised by the said petition were ordered, by an order of a learned judge, made under that Act, to be stated as a special case for the opinion of the Court of Common Pleas.

Pursuant to such order the facts were accordingly stated in the following:—

#### CASE.

1. An election for the office of town councillor for the Nechell's Ward of the borough of Birmingham was held in the said ward on Monday, the 2nd of November, 1874, to supply a vacancy in the council of the said borough of Birmingham.

2. For the purposes of municipal elections, Nechell's Ward is divided into nine polling districts, respectively numbered 123, 124, 125, 126, 127, 128, 129, 130, and 131. In each of these polling districts there is a polling station, where the votes of the burgesses, appearing on the ward list rated in that district, are taken.

3. Upon the ward list in force at the time of the said election for the said Nechell's Ward, there are 4,405 voters, and upon the list for polling district No. 130 (which is the largest of the said nine polling districts) there are 564 voters.

4. At the said election the above-named petitioner, Lewis Woodward, and the above-named respondent, Henry Sarsons, were the only candidates, and the above-named respondent, John Sadler (who is the alderman of the said ward), was the returning officer.

5. A poll having become necessary, the same was held, and at its conclusion the said returning officer, John Sadler, declared that the number of votes given for each of the said candidates was as follows:—

For Henry Sarsons . . . . .	965 votes
„ Lewis Woodward . . . . .	775 „

and thereupon he declared the said Henry Sarsons to be duly elected to the vacant office of town councillor.

6. The said returning officer, John Sadler, appointed certain persons to act as presiding officers at each of the said polling stations. At polling station No. 130 the said John Sadler appointed one J. B. Smith, a solicitor, presiding officer.

7. Upon an elector attending to vote, and applying for a ballot paper

at polling station No. 130, the said presiding officer, J. B. Smith, first marked upon the face of the ballot paper the number of such voter appearing on the burgess roll, and then delivered the same out so marked to the voter as and being a ballot paper to be used by him, and the same was accordingly used by him for the purpose of voting. This course the said presiding officer followed in the case of every ballot paper used, or attempted to be used, at the said polling station, No. 130, at the said election. The returning officer, the said John Sadler, was not aware of this being done, or having been done, until after the polling was closed.

8. The number of ballot papers so marked by the presiding officer, J. B. Smith, was 294, of which 234 were given in favour of the petitioner, and the remainder in favour of the respondent, Henry Sarsons. The burgess roll numbers so marked by the said presiding officer upon the said ballot papers were, in fact, not seen so as to be identified, but they could have been seen by the persons present at the counting of the ballot papers, who were the returning officer and his assistant, the petitioner, the respondent, and their respective agents, one for each, and by referring to the burgess roll such persons could have identified the voters who had made use of such ballot papers.

9. The said presiding officer, J. B. Smith, did not make out any ballot paper account, or statement showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, or any account or statement to that or the like effect.

10. At polling station No. 125, about twenty ballot papers were marked by the presiding officer at that station by the direction of voters who were unable to read. Each of such ballot papers was placed by the said presiding officer in the ballot box, wrapped up in the declaration of inability to read, made by the voter for whom such vote was so marked as aforesaid. The declarations of inability to read of the said votes so marked by the said presiding officer as aforesaid were not made up into a separate packet, sealed with the seal of the said presiding officer, and so delivered to the returning officer, but were delivered to him in the ballot box, with the ballot papers as aforesaid. Each of the votes so given and so marked by the said presiding officer as aforesaid could have been, but were not in fact, identified by the returning officer at the counting of the votes by comparing the declarations of inability to read, in which each such ballot paper was wrapped as aforesaid, with the ballot paper.

11. Subsequently to the presentation of the petition herein, and in the month of January, 1875, having obtained inspection of the said ballot papers under the order of the County Court, the petitioner observed certain marks upon and matters in connection with certain of the said ballot papers, and now contends that the twenty-two votes hereinafter mentioned ought to have been rejected by the said returning officer, by reason of the ballot papers by which the same were given bearing writing or marks by which the voter could be identified, or because they were void for uncertainty. The following are particulars of the writings or marks on the said ballot papers, and of the facts alleged to render them void for uncertainty:—

(1.) Two ballot papers, Nos. 844 and 889, bearing the name "Sarsons" opposite the name of the respondent "Sarsons" printed upon such ballot papers.

(2.) Five ballot papers, Nos. 433, 926, 928, 1,364, 1,426, marked with two crosses instead of one.

(3.) One ballot paper, No. 1,726, marked with three crosses instead of one.

(4.) One ballot paper, No. 2,140, marked with a straight stroke in addition to the cross.

(5.) One ballot paper, No. 3,562, marked with the letter "P" in addition to the cross.



(6.) One ballot paper, No. 875, marked with a straight line instead of a cross.

(7.) One ballot paper, No. 641, marked with a star instead of a cross.

(8.) One ballot paper, No. 911, having the name of Woodward nearly struck out.

(9.) One ballot paper, No. 638, bearing the voter's signature.

(10.) Eight ballot papers, Nos. 505, 190, 155, 117, 174, 183, 842, 1,413, with a cross placed on the left instead of on the right-hand side of the candidate's name.

Appendix A. contains exact illustrations of the marks appearing on the said twenty-two ballot papers. The said returning officer, John Sadler, did not reject any of the said ballot papers as invalid, but allowed the whole as good and valid votes, and counted them for the said respondent, Henry Sarsons. No objection was made thereto at the counting of the votes, and in fact the petitioner's present contention is based on information obtained on the inspection of ballot papers on the 11th of January, 1875.

12. On the inspection of the ballot papers on behalf of the respondent, Henry Sarsons, which took place subsequently to the inspection on behalf of the petitioner, it appeared that the ten ballot papers hereinafter mentioned had been dealt with by the respective voters in a manner similar to that shown in the case of some of the twenty-two ballot papers specified in Appendix A.

In the Appendix to this case marked B will be found exact illustrations of the marks appearing upon the said ten ballot papers, which the said returning officer counted as good and valid votes in favour of the petitioner. No objection was made thereto at the counting of the votes.

13. The said returning officer, John Sadler, rejected all the ballot papers used at polling station No. 130. As to certain of the said ballot papers, there were in addition to the burgess roll number other objections to them.

14. The said returning officer, John Sadler, in rejecting the ballot papers mentioned in the last preceding paragraph of this case, and in rejecting other ballot papers, making, with these rejected papers, 308 rejected ballot papers, did not indorse upon any of the papers so rejected by him the word "rejected" or any similar word, but as he came to each rejected ballot paper he put the same aside; and after he had finished the counting, placed all the rejected ballot papers together in a brown paper parcel, which he then sealed up and indorsed, "Rejected ballot papers, Nechell's Ward, 1874," and handed, with the ballot papers and accounts connected with the said election, to the town clerk of Birmingham. Before rejecting the said ballot papers, the said returning officer consulted the town clerk, and acted upon his advice.

15. The said returning officer, John Sadler, did not make any report of the ballot papers rejected, and not counted by him, save as above appears, but he filled up a return in conformity with No. 9 of the printed instructions, supplied to him as returning officer, a copy of which instructions is contained in Appendix C, and forms part of this case.

The petitioner contends that, upon the facts stated in this case, the said respondent, Henry Sarsons, was not duly elected.

The respondent, Henry Sarsons, contends that he was duly elected.

The respondent, John Sadler, contends that the said election was not rendered invalid by any act or default on his part or for which he is responsible.

The question for the opinion of the Court is, whether the election of the said respondent, Henry Sarsons, was invalid on any of the grounds raised by the said petition and particulars.

The decision of the Court upon this special case is to be certified in the usual way.

The costs, charges, and expenses of and incidental to the presentation



of the petition and to the proceedings consequent thereon and of this special case, are in the discretion of the Court, and are to be borne and paid according to the order of the Court.

*Appendix A.*

844. [Invalid.]

1	SARSONS.	Sarsons
2	WOODWARD.	

*Name of candidate written.*

889. [Invalid.]

1	SARSONS.	Sarsons
2	WOODWARD.	

*Name of candidate written.*

433. [Valid.]

1	SARSONS.	XX
2	WOODWARD.	

926. [Valid.]

1	SARSONS.	X ●
2	WOODWARD.	

926. A X in pencil had evidently been rubbed with a damp finger.

928. [Valid.]

1	SARSONS.	X X
2	WOODWARD.	

928. Had evidently been marked with a X in ink and folded up, thereby making a corresponding mark on the other part of the paper.

1364. [Valid.]

1	SARSONS. <b>X</b>	<b>X</b>
2	WOODWARD.	

1364, like 928, had evidently been marked with a **X** in ink and folded up, thereby making a corresponding mark on the other part of the paper.

1426. [Valid.]

1	SARSONS.	<b>XX</b>
2	WOODWARD.	

1726. [Valid.]

1	<b>X</b> SARSONS. <b>X</b>	<b>X</b>
2	WOODWARD.	

2140. [Valid.]

1	SARSONS.	<b>X I</b>
2	WOODWARD.	

3562. [Valid.]

1	SARSONS.	<b>X P</b>
2	WOODWARD.	

875. [Valid.]

1	SARSONS.	/
2	WOODWARD.	

641. [Valid.]

1	SARSONS.	*
2	WOODWARD.	

911. [Valid.]

1	SARSONS.	X
2	<del>WOODWARD.</del>	

911. The name "Woodward" has a pencil line through it, diagonally across the paper.

638. [Invalid.]

1	SARSONS.	X
2	WOODWARD.	

E. Prews.

This ballot paper bears the name of the voter, E. Prews, which is to be found on the Burgess roll.

117. [Valid.]

X 1	SARSONS.	
2	WOODWARD.	

155. [Valid.]

1 X	SARSONS.	
2	WOODWARD.	

190. [Valid.]

1 X	SARSONS.	
2	WOODWARD.	



## APPENDIX IV.

505. [Valid.]

<b>X</b> 1	SARSONS.	
2	WOODWARD.	

174. [Valid.]

1	<b>X</b> SARSONS.	
2	WOODWARD.	

183. [Valid.]

1	<b>X</b> SARSONS.	
2	WOODWARD.	

842. [Valid.]

1	<b>X</b> SARSONS.	
2	WOODWARD.	

1413. [Valid.]

1	<b>X</b> SARSONS.	
2	WOODWARD.	

*Appendix B.*

1290. [Valid.]

1	SARSONS.	
2	WOODWARD.	<b>X</b> <b>X</b>

1632. [Valid.]

1	SARSONS.	
2	WOODWARD.	<b>X</b>

1632, similar to 926.

3672. [Valid.]

1	SARSONS.	
2	WOODWARD.	<b>X</b> <b>X</b>

410. [Invalid.]

1	SARSONS.	
2	WOODWARD.	<b>X</b> C. W.

1374. [Valid.]

1	SARSONS.	
2	WOODWARD.	<b>X</b>

This paper was torn through the middle where indicated by the dotted line.

1391. [Valid.]

1	SARSONS.	
2	<b>X</b> WOODWARD.	

2592 and 2613. [Valid.]

1	SARSONS.	
<b>X</b> 2	WOODWARD.	

3641 and 3642. [Valid.]

1	SARSONS.	
2	<b>X</b> WOODWARD.	

*Appendix C.*

## "BOROUGH OF BIRMINGHAM.

## "Instructions to Returning Officers.

## "Counting Votes.

"The returning officer will attend at \_\_\_\_\_, at four o'clock p.m. on the day of election to receive the ballot boxes and papers from the officers; when all the boxes have been delivered to him he will then

"1. Open the ballot boxes.

"2. Count the number of ballot papers in each box separately, and record the number on the enclosed form.

"3. Mix all the ballot papers together (keeping their faces upwards).

"4. Sort into separate packets the votes for each candidate, and the doubtful votes.

"5. Examine the doubtful votes, and reject for the following reasons only:

"(1). For want of official mark.

"(2). Voting for more candidates than entitled to.

"(3). Writing or mark by which the voter could be identified.

"(4). Unmarked or void for uncertainty.

"6. Count the votes for each party.

"[It is very convenient to arrange them in heaps of twenties.]

"7. Seal up in separate packets.

"(1). The counted ballot papers.

"(2). The rejected ballot papers.

"[The packets of tendered ballot papers, marked copy of ward list, and counterfoils must not be opened.]

"8. Verify the presiding officer's ballot paper account.

"9. Fill up and sign return on the printed forms herewith, and cause one of them to be posted immediately on the outer door of the building in which the counting takes place, and enclose the others in an envelope and send them to the town clerk.

"10. Direct the constables in attendance to take the boxes and papers to the town clerk's office.

"The returning officer, his assistants and clerks, the candidates and the duly appointed agents of the candidates and no other person, except with the sanction of the returning officer, may be present at the counting of the votes."

The case was argued by

*C. Russell* (*Chandos Leigh* with him), for the petitioner.

*Sir H. James* (*R. Brown* with him), for the respondent Sarsons.

*Giffard*, for the respondent Sadler (the returning officer).

The following authorities were cited—*The Hardwick Case*,<sup>1</sup> *Re The Belfast Municipal Election*,<sup>2</sup> *The Drogheda Case*,<sup>3</sup> *The Hackney Case*,<sup>4</sup> *The Canterbury Case*,<sup>5</sup> *Haswell v. Stewart—The Wigtown Case*,<sup>6</sup> *Leigh and Le Marchant's Election Law* (2nd edit.), p. 97, citing judgment of Martin, B., in *The Warrington Case*,<sup>7</sup> *Bushby on Election Law* (4th edit.), p. 70, *The Second Harwich Case*,<sup>8</sup> *The Limerick Case*,<sup>9</sup> and *Davis v. Lord Kensington—The Haverfordwest Election Case*.<sup>10</sup>

*Cur. adv. vult.*

<sup>1</sup> 1 Pow. Rod. & D. 315.

<sup>2</sup> Law Rep. 7 Ir. Com. Law, 30.

<sup>3</sup> W. & D. 206.

<sup>4</sup> 2 O. & H. 77.

<sup>5</sup> K. & O. 131.

<sup>6</sup> 1 Scotch Sessions Cases, 925.

<sup>7</sup> 1 O. & H. 44.

<sup>8</sup> 1 Pow. Rod. & D. 314.

<sup>9</sup> P. & K. 373.

<sup>10</sup> 43 L. J. R. N. S. C. P. 370; S. C. L. R. 9 C. P. 750.



The following judgment of the court,<sup>11</sup> which had been prepared by Brett, J., was (on July 9th) read, in his absence, by

LORD COLERIDGE, C.J.—In this case a petition had been presented praying that the election of the respondent, Mr. Sarsons, to the office of town councillor should be declared void, and a case was stated for the opinion of the court. At the election the petitioner Woodward and the respondent Sarsons were the candidates, and the respondent Sadler was the alderman of the ward and returning officer. The returning officer appointed one Smith to be his presiding officer at polling station, No. 130. Upon the electors applying for a ballot paper at such station, the presiding officer marked upon the face of the ballot paper given to each of them the number of the voter appearing on the burgess roll. This he did to every ballot paper handed out by him. The number of ballot papers so marked and given out by him was 294, of which 234 were given in favour of the petitioner Woodward and 60 in favour of the respondent Sarsons. The burgess roll numbers so marked were, in fact, not seen so as to be identified, but they could have been seen by the persons present at the counting of the ballot papers. At polling station No. 125, about 20 ballot papers were marked by the presiding officer by the direction of voters who were unable to read. Each of such ballot papers was placed by the presiding officer in the ballot-box wrapped up in the declaration of inability to read, made by the voter for whom such vote was marked. Each of the votes so given and so marked by the presiding officer could have been, but was not in fact, identified by the returning officer at the counting of the votes by comparing the ballot papers with the declarations of inability in which they were wrapped. Twenty-two ballot papers, which had been counted as valid, were, on inspection after the presentation of the petition found to be marked in a manner to which objection was now taken. It was contended that they ought all to have been rejected. The returning officer declared at the election the numbers of votes thus:

For Sarsons	.	.	.	.	.	.	965
For Woodward	.	.	.	.	.	.	775

Majority for Sarsons . . . 190

and hereupon he declared Sarsons, the respondent, to be duly elected.

The petition, without praying for a scrutiny, prayed that it might be determined that the said H. Sarsons was not duly elected, and that the election was void.

Upon these facts it was argued, on behalf of the petitioner, that the election was void, because it had not been conducted in accordance with the Ballot Act; that it was void on that account according to the common law of Parliament, because the deviation from the Act was so great that the election could not be said to be an election by ballot; that it was void under the Ballot Act itself according to Section 13, because it had not been conducted according to the rules in the schedules, nor in accordance with the principles laid down in the body of the Act, and the non-compliance with the principles of the Act had affected the result of the election. And as to the last allegation, it was said that the petitioner was not bound, in order to prove it, to show that on a scrutiny the respondent would be in a minority, but it was enough if he could show that so large a body of electors as those who did vote or who might have voted at the polling station No. 130 were or might have been virtually disfranchised.

On behalf of the respondents it was urged that the admitted error of the presiding officer at the polling station No. 130 was not of sufficient importance to avoid election at common law, because the election was, notwithstanding such error, substantially conducted as an election by

<sup>11</sup> Brett, J., Denman, J., and Archibald, J.

ballot; that in this case it could be demonstrated that the mistake relied on had not affected the result of the election; that a breach of the Ballot Act, however extensive, cannot as such avoid an election, for there is no enactment in the Act to that effect; that no such enactment is contained in Section 13; that it is an enactment to save certain elections, and not to invalidate any; that it is an enactment of extreme caution stating as law that which was equally the law before. Arguments were then gone into as to the alleged validity and invalidity of different classes of votes which had been counted. This was not done as by way of scrutiny, but in order to determine whether the alleged mistakes had or had not affected the result of the election.

The questions raised for decision seem to me, first, what is the true statement of the rule under which an election may be avoided by the common law of Parliament? secondly, is the present case brought within the rule? thirdly, whether a breach of the Ballot Act can as such be a ground for avoiding an election? fourthly, if yes; can this election be thereby avoided?

As to the first, we are of opinion that the true statement is that an election is to be declared void by the common law applicable to Parliamentary elections if it was so conducted that the tribunal which is asked to avoid it is satisfied as matter of fact, either that there was no real *electing* at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be so satisfied, *i.e.*, that there was no real *electing* by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting as by polling stations being demolished or not opened, or by other of the means of voting according to law not being supplied, or supplied with such errors as to render the voting, by means of them, void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think that the same result should follow if, by reason of any such or similar mishaps, the tribunal, without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors *may have been* prevented from electing the candidate they preferred. But if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been prevented from electing the candidate they preferred, then we think that the existence of such mishaps, would not entitle the tribunal to declare the election void by the common law of Parliament. This, we think, is the result of comparing the judgments of Grove, J., at Hackney<sup>12</sup> and Dudley<sup>13</sup> with judgments of Martin, B., at Salford,<sup>14</sup> and of Mellor, J., at Bolton,<sup>15</sup> all which judgments are in accordance with, but express more accurately the grounds of, the decisions in Parliament in the older cases of the *Norfolk*,<sup>16</sup> *Morpeth*,<sup>17</sup> *Pontefract*,<sup>18</sup> *Coventry*,<sup>19</sup> *New Ross*,<sup>20</sup> and *Drogheda*,<sup>21</sup> all which are mentioned in *Rogers on Elections*, 11th ed., pp. 392, 393. As to the second, *i.e.*, that the election was not really conducted under the subsisting election laws at all, though there was an election in the sense of there having been an election by the will of

<sup>12</sup> 2 O. & H. 77.

<sup>13</sup> *Ibid.* 115.

<sup>14</sup> *Ibid.* 133.

<sup>15</sup> *Ibid.* 138.

<sup>16</sup> Heyw. 546.

<sup>17</sup> 1 Dougl. 147.

<sup>18</sup> *Ibid.* 227.

<sup>19</sup> 15 Journ. 276.

<sup>20</sup> 2 Pow. Rod. & D. 193.

<sup>21</sup> W. & D. 206.



the constituency, we think that the question must in like manner be whether the departure from the prescribed method of election is so great that the tribunal is satisfied as matter of fact that the election was not an election under the existing laws. It is not enough to say that great mistakes were made in carrying out the election under those laws; it is necessary to be able to say that either wilfully or erroneously the election was not carried out under those laws, but under some other method. For instance, if, during the time of the old laws, with the consent of a whole constituency, a candidate had been selected by tossing up a coin, or by the result of a horse race, it might well have been said that the electors had exercised their free will, but it should have been held that they had exercised it under a law of their own invention, and not under the existing election laws, which prescribed an election by voting. So now, where the election is to be an election by ballot, if either wilfully or erroneously a *whole constituency* were to vote, but *not by ballot at all*, the election would be a free exercise of their will, but it would not be an election by ballot, and therefore not an election under the existing election law. But if, in the opinion of the tribunal, the election was substantially an election by ballot, then no mistakes or misconduct, however great, in the use of the machinery of the Ballot Act, could justify the tribunal in declaring the election void by the common law of Parliament. We agree upon this point with the answer attributed to Martin, B., before a Committee of the House of Commons, with his decision at Salford, and with the decisions of Mellor, J., at Bolton, and of Berry, J., at Drogheda.<sup>21</sup>

If the rule be thus stated, then the next question is, whether we can say, upon the facts stated in the present case, that a majority of the electors have been, or that there is reasonable ground to believe that a majority may have been, by misconduct or error of the presiding officers, prevented from recording their votes with effect. Now there is no evidence, as it seems to us, that any elector was prevented from recording his vote, or induced not to record it, by what occurred. All who went to vote at the polling station No. 130, did vote. It was argued that a report of the error being then perpetrated might have prevented others from going to vote, but this was answered by showing that the case finds that no one noticed the error until after the election was over. The result is that all the electors who desired to vote did vote; and as to the votes which were given, and which are objected to, it is now known (except as to the twenty) for whom each of them was in fact given. In this case, therefore, where the objections to the particular votes have been determined, the effect of the mistakes on the result of the election will be exactly known. If so, there is no room for speculation or doubt as to whether a majority *may or may not have* been prevented from voting with effect. Those who did not vote were not prevented by the errors which occurred; it will be seen how the majority of those who did vote was affected by such errors. In this case, therefore, it becomes necessary, not by way of scrutiny, but in order to determine whether the majority has been prevented from voting with effect, to determine upon the validity or invalidity of the votes which were given, and to which objection has been taken. In order to determine this part of the case, it is necessary to consider and determine the construction of the Ballot Act. Now, first, the Act is divided into the principal part which contains certain sections, and two schedules which contain certain rules and forms; and by Section 28, "The schedules and the notes thereto and directions therein shall be construed and have effect as part of this Act." The rules and forms, therefore, are to be construed as part of the Act, but are spoken of as containing "directions." Comparing the sections and the rules, it will be seen that, for the most part, if not invariably, the rules point out the mode or manner of doing what the section enacts shall be done. And in Schedule 2, the first note states, "The forms contained in this schedule or forms as nearly resembling the same as circumstances will admit shall



be used." And in the ballot paper, as given in the schedule, is "*Directions as to printing ballot paper,*" and "*Form of directions for the guidance of voters in voting, &c.*" These observations lead us to the conclusion that the enactments, as to the rules in the first schedule, and the forms in the second, are directory enactments as distinguished from the absolute enactments in the sections in the body of the Act. And in such case, in order to determine the preliminary question, which is, whether there has been a material breach of the Act, and which must be determined before determining what effect such breach has upon a vote on the election, the general rule is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. The 2nd section enacts, as to what the voter shall do, that "The voter having secretly marked his vote on the paper and folded it up so as to conceal his vote, shall place it in an enclosed box." This is all that is said in the body of the Act about what the voter shall do with the ballot paper. That which is absolute, therefore, is that the voter shall mark his paper *secretly*. How he shall mark it is in the directory part of the statute. By Rule 25, "The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and *there mark his paper*, and fold it up so as to conceal his vote, and shall then put his ballot paper so folded up into the ballot-box." This rule, it will be observed, does not yet say how the paper is to be marked. But in Schedule 2 is given the "form of ballot paper," and appended to this form is a note, which, by the 28th section, is to be construed and have effect as part of the Act. This note contains the form of directions for the guidance of the voter in voting: "The voter will go into one of the compartments, and with the pencil provided in the compartment place a cross on the right hand side, opposite the name of each candidate for whom he votes, thus **X**." This is the only enactment throughout the statute as to the manner and form in which the voter is to mark his ballot paper. And therefore, by the general rule before mentioned, it would be necessary that the absolute enactment that the paper should be marked secretly should be obeyed exactly, but it would be sufficient that the manner of marking the paper should be obeyed substantially. If these two enactments be so obeyed, there is no material breach of the Act. The extent of error, which is to vitiate so as to annul the ballot paper, is further to be gathered from the statute itself. By Section 2, "Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is *written or marked by which the voter can be identified*, shall be void, and not counted." It is not every writing or every mark, besides the number on the back, which is to make the paper void, but only such a writing or mark as is one by which the voter can be identified. So in Rule 36, "The returning officer shall report, &c., the number of ballot papers rejected, and not counted by him under the several heads of, first, want of official mark; secondly, voting for more candidates than entitled to; thirdly, *writing or mark by which voter could be identified*; fourthly, *unmarked or void for uncertainty*." And then in Schedule 2 in the note to the form above referred to, we have this warning, "If the voter votes for more than candidates, or places *any mark* on the paper *by which he may be afterwards identified*, his ballot paper will be void, and will not be counted." The result seems to be, as to writing or mark on the ballot paper, that if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote at all, or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing or a mark by which the voter can be identified, then the ballot paper is void, and is not to be counted. Or, to put the matter affirmatively, the paper must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must

not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted.

If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled, the ballot paper is void, and should not be counted: and if it is counted, it should be struck out on a scrutiny. The decision in each case is upon a point of fact to be decided, first, by the returning officer, and, afterwards, by the election tribunal on petition.

Applying these views to the votes in question before us, it is clear that the 294 ballot papers marked by the presiding officer at the polling station No. 130 were void, and ought not to be counted. There was a mark on them by which, on reference to the burgess roll, the way in which the voter had voted could be identified.

As to the 20 ballot papers at the polling station No. 125, there was a breach by the presiding officer of the directions in rule 26, but there was no breach for which by any enactment the ballot papers can be rejected. The votes were given in the way prescribed, but the presiding officer dealt with the declarations erroneously. We are of opinion that those votes were properly counted. As to the ballot papers in Appendix A, No. 638 is clearly void, and must be disallowed. We, with some hesitation, disallow Nos. 844 and 889. There is no cross at all, and we yield to the suggested rule that the writing by the voter of the name of the candidate may give too much facility, by reason of the handwriting, to identify the voter. But we cannot think that the mere fact of two crosses being placed, as in 433 or as in 928, ought to vitiate the ballot paper. There can be no doubt as to the intention to vote, and no doubt as to the intention to vote emphatically for the one candidate. If there were evidence of an arrangement that the voter to indicate that it was he that voted, who had used the ballot paper, then, by reason of such evidence, such double mark would be a mark by which the voter could be identified, and then the paper, upon such proof being made, should be rejected. But the mere fact of there being two such crosses, is not, in our judgment, a substantial breach of the statute. Neither is the mere fact of an additional mark such as is found in 926, nor the mere fact of the peculiar form of cross in 1,364 and 641, nor the marks on 1,726, 2,140, 3,562, or 911, though in these cases also, extrinsic evidence of arrangement might make such peculiarities indications of identity. We think that, inasmuch as the ballot paper was handed in by the voter as a vote, the mark on 875 substantially indicated that the voter intended to vote for the candidate against whose name it is placed, and that the paper ought to be allowed. And we think the same reasoning applies to 117, 155, 190, 505, 174, 183, 842, 1,413, in which the cross is placed on the left-hand side of the candidate's name, instead of on the right-hand side. The substance of the direction in the note in Schedule 2 is fulfilled, which is, in our opinion, that the voter should clearly indicate the candidate for whom he intends to vote. If this be done substantially, and the absolute enactment as to secrecy be observed fully, we think the statute is satisfied. For the same reasons we, in Appendix B, disallow No. 410, but allow all the rest.

We are aware that in so applying the principles which we have deduced from the statute, we are acting apparently in opposition to some of the decisions in *Haswell v. Stewart (The Wigtown Case)*,<sup>22</sup> but there may have been evidence in that case which does not exist in the present, and which made many of the marks there marks of identification, which the mere presence of the marks here does not do. If this was not so, we



respectfully differ from the strict view taken by the majority of the learned judges who decided that case, and adhere to the view of Lord Benholme given in that case. It follows from our decision as to the different ballot papers, that if the 60 which were given for Sarsons, but properly disallowed at the counting by the returning officer, had not been rendered void by the presiding officer, they would have made the votes for Sarsons 1,025, from which striking three disallowed papers in Appendix A, his numbers would have been 1,022; and adding the 234 for Woodward, but striking off one disallowed in Appendix B, his numbers would have been 1,008. The 20 being properly, in our opinion, allowed, do not affect the result. Inasmuch, however, as no voter was prevented from voting, it follows that the errors of the presiding officers at the polling stations, No. 130 and No. 125, did not affect the result of the election, and did not prevent the majority of electors from effectively exercising their votes in favour of the candidate they preferred, and therefore that the election cannot be declared void by the common law applicable to Parliamentary elections.

But then it is urged that there has been a breach of the Ballot Act, and therefore the election is, by virtue of the Act itself, void. This is the third question which was raised in argument before us. It is said Section 13, though it is in a negative form, assumes, as an affirmative proposition, that a non-compliance with the rules or any mistake in the use of the forms would render an election invalid, unless it appeared that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election. If this proposition be closely examined, it will be found to be equivalent to this, that the non-observance of the rules or forms, which is to render the election invalid, must be so great as to amount to a conducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of votes; or, in other words, the result of the election. It, therefore, is, as has been said, "an enactment *ex abundante cautela*," declaring that to be the law applicable to elections under the Ballot Act, which would have been the law to be applied, if that section had not existed. It follows that, for the same reasons which prevent us from holding that this election was void at common law, we must hold that it is not void under the statute.

As between the petitioner and the respondent Sarsons, we therefore hold that this petition must be dismissed with costs.

As between the petitioner and the respondent Sadler, we are of opinion that, inasmuch as there was no personal default by the respondent, and the result of the election was not affected, the petition must be dismissed; each party to bear his own costs.

*Petition dismissed accordingly.*



## APPENDIX V.

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## 1.

*Certificate of Two Members on Vacancy during Recess.*<sup>1</sup>

We whose names are underwritten, being two members of the House of Commons, do hereby certify, that M.P., late a member of the said House, serving as one of the knights of the shire for the county of [or as the case may be] died upon the day of [or is become a peer of Great Britain, and that a writ of summons hath been issued, under the Great Seal of Great Britain, to summon him to Parliament], [or has accepted the office of member of the council for India (or as the case may be)], and has been gazetted thereto in the Gazette, dated the day of , and has thereby vacated his seat; and we give you this notice, to the intent that you may issue your warrant to the clerk of the Crown, to make out a new writ for the election of a knight to serve in Parliament for the said county of [or as the case may be] in the room of the said M.P. Given under our hands, this day of .

*To the Speaker of  
the House of Commons.*

*Note.*—That in case there shall be no Speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions contained in s. 5 of the statute 24 Geo. 3, sess. 2, c. 26.

## 2.

*Writ for a County or Borough at a Parliamentary Election.*<sup>2</sup>

<sup>3</sup> George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to the of the county [or borough] of , greeting:

<sup>4</sup> Whereas by the advice of our council we have ordered a Parliament to be holden at Westminster on the day of next. We command you that, notice of the time and place of election being first duly given, you do cause election to be made according to law of members [or a member] to serve in Parliament for the said county [or the division of the said county, or the borough, or as the case may be] of ,<sup>5</sup> and that you do cause the names of such members [or member] when so elected, whether they [or he] be present or absent, to be certified to us, in our Chancery, without delay.

Witness ourself at Westminster, the day of , in the year of our reign, and in the year of our Lord 19 .

<sup>1</sup> See the forms in 24 Geo. 3, sess. 2, c. 26, Sched., and 21 & 22 Vict. c. 110, Sched., pp. 244, 245, *supra*.

<sup>2</sup> See Ballot Act, 1872, Sched. 2.

<sup>3</sup> The name of the sovereign may be altered when necessary.

<sup>4</sup> This preamble to be omitted except in case of a general election.

<sup>5</sup> Except in a general election, insert here "in the place of A.B. deceased," or otherwise, stating the cause of vacancy.

*Label or Direction of Writ.<sup>2</sup>*To the <sup>6</sup> of

A writ of a new election of members [or member] for the said county [or division of a county or borough, or as the case may be].

## 3.

*Endorsement to be made on Writ on receipt thereof.<sup>7</sup>*

Received the within writ on the day of 19

(Signed) A.B.,

High Sheriff [or Sheriff, or Mayor, or as the case may be].

*Certificate endorsed on the Writ.<sup>8</sup>*

I hereby certify, that the members [or member] elected for , in pursuance of the within-written writ, are [or is] A.B., of , in the county of , and C.D., of , in the county of .

(Signed) A.B.,

High Sheriff [or Sheriff, or Mayor, or as the case may be].

*Note.*—A separate writ will be issued for each county as defined for the purposes of a Parliamentary Election.

## 4.

*Notice of Election.<sup>9</sup>*The returning officer of the of will, on the day of now next ensuing, between the hours of and , proceed to the nomination, and, if there is no opposition, to the election, of a member [or members] for the said county [or division of a county or borough] at the <sup>10</sup>Forms of nomination paper may be obtained at , <sup>10</sup> between the hours of and on , and must be signed by two registered electors as proposer and seconder, and by eight other registered electors as assenting to the nomination.Every nomination paper must be delivered to the returning officer by the candidate proposed, or by his proposer and seconder, between the said hours of and on the said day of at the said <sup>10</sup>

Each candidate nominated, and his proposer and seconder, and no other persons, are entitled to be admitted to the room,

(Signed) A.B.,

Sheriff [or Mayor, or as the case may be].  
day of 19

Take notice, that all persons who are guilty of bribery, treating, undue influence, personation, or other corrupt practices at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act, 1854," and the Acts amending the same.

## 5.

*Appointment of Election Agent.*

I, A.B., of , do hereby name and appoint C.D., of , as my election agent in respect of the election now about to be held for day of , 19 .

(Here sign) A.B.

<sup>6</sup> Insert "sheriff" or other returning officer.<sup>7</sup> See Ballot Act, 1872, Sched. 2.<sup>8</sup> See Ballot Act, 1872, s. 1, Sched. 1, r. 44, and Sched. 2.<sup>9</sup> See Ballot Act, 1872, Sched. 2; Returning Officers Act, 1875, s. 7; and Corrupt Practices Act, 1883, s. 62 (3).<sup>10</sup> NOTE.—Insert description of place and room.



## 6.

*Declaration of Election Agent's Name and Address to Returning Officer.*<sup>11</sup>

I, A.B., of , a candidate in respect of the election now about to be held for the county [or city, or town, or borough, or burgh, or district of burghs, or division of the county, or city, or town, or borough, or burgh, as the case may be] of , do hereby declare the name and address of my election agent to be C.D., of ; and the address of his office at which all claims, notices, writs, summons, and documents may be delivered to be .  
day of , 19 .

(Here sign) A.B.

To the Returning Officer for .

## 7.

*Nomination Paper.*<sup>12</sup>

We, the undersigned A.B., of , in the of , and C.D., of , in the of , being electors for the of , do hereby nominate the following person as a proper person to serve as member for the said in Parliament.—

Surname.	Other Names.	Abode.	Rank, Profession, or Occupation.
BROWN . .	John . . .	52, George St., Bristol.	Merchant.
JONES . .	<i>or</i> William David .	High Elms, Wilts .	Esquire.
MERTON . .	<i>or</i> Hon. George Travis (commonly called Viscount).	Swanworth, Berks .	Viscount.
SMITH . .	<i>or</i> Henry Sydney .	72, High St., Bath .	Solicitor.

Signed A.B.  
C.D.

We, the undersigned, being registered electors of the , do hereby assent to the nomination of the above-mentioned *John Brown* as a proper person to serve as member for the said in Parliament.

(Signed) E.F. of  
G.H. of  
I.J. of  
K.L. of  
M.N. of  
O.P. of  
Q.R. of  
S.T. of  
S.R. of  
N.L. of

*Note.*—Where a candidate is an Irish peer, or is commonly known by some title, he may be described by his title as if it were his surname.

<sup>11</sup> See p. 55, *supra*, and also Corrupt Practices Act, 1883, s. 24 (3); *ibid.* s. 26 (1).

<sup>12</sup> See pp. 18—22, *supra*, and Ballot Act, 1872, Sched. 1, r. 7, and Sched. 2.

## 8.

*Notice of Disqualification of a Candidate.*<sup>13</sup>

Election, 19 .

The electors of the county [or borough] of .

Whereas A.B., a candidate for the representation of the county [or borough] of at an election now about to be held for the said county [or borough] is [state grounds of disqualification] and whereas by reason of the said [or matters aforesaid] the said A.B. is incapacitated and disqualified from being elected as a member of Parliament for the said county [or borough]: Now take notice that all votes given for the said A.B. at the said election will be thrown away and wholly null and void.

(Signed) C.D.,

Agent for E.F., a Candidate for the representation of the county [or borough] of at the approaching election.

(Note to last form.)

Similar forms of notice of disqualification will be found in *Londonderry* (1860), where the disqualification consisted of government contracts; *Galway (County)* (1872), 2 O. & H. 47, a case of treating and undue influence; and *Drinkwater v. Deakin (Launceston)* (1874), L. R. 9 C. P. 626. In the last-mentioned case the grounds of disqualification stated are insufficient. See also *Cox v. Ambrose* (1889), 7 Times L. R. 59.

## 9.

*Ballot Paper.*<sup>14</sup>

## Form of Front of Ballot Paper.

Counterfoil No.

## NOTE:

The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

•			
•			
•	1	BROWN (John Brown, of 52, George St., Bristol, merchant.)	
•			
•	2	JONES (William David Jones, of High Elms, Wilts, esquire.)	
•			
•	3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
•			
•	4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	
•			

## Form of Back of Ballot Paper.

Election for county [or borough, or ward].

19 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

<sup>13</sup> See p. 227, *supra*.<sup>14</sup> See p. 7, *supra*.

*Directions as to printing Ballot Paper.*

Nothing is to be printed on the front of the ballot paper, except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses and descriptions shall be printed in small characters.

## 10.

*Appointment of Sub-Agent.*

I, A.B., of , the election agent of C.D., of , a candidate in respect of the election now about to be held for , do hereby appoint E.F., of , my sub-agent to act within polling district .  
day of , 19 .

(Here sign) A.B.

## 11.

*Appointment of Polling Agent.*

I, A.B., of , the election agent [or, as the case may be, sub-agent within polling district] of C.D., a candidate in respect of the election now about to be held for the county [or city, or town, or borough, or burgh, or district of burghs, or division of the county, or city, or town, or borough, or burgh, as the case may be] of , do hereby nominate and appoint E.F., of , to be a polling agent on behalf of the said C.D., to attend at polling station No. , in polling district No. , for the purpose of detecting personation [if also employed as a counting agent, add], and also as an agent to attend the counting of the votes on behalf of the said C.D.

(Here sign) A.B.

day of 19 .  
To the Returning Officer for and to the Presiding Officer at polling station .

## 12.

*Appointment of Presiding Officer.*

South Bedfordshire } A.B., Esq., high sheriff of the county aforesaid  
[or Inverness] } [or who has been duly appointed in writing by  
[as the case may be] } C.D., Esq., high sheriff of the county of , to  
to wit. } act as deputy returning officer for the division  
aforesaid, at the now ensuing election for the said division] or returning  
officer for the city [or borough] aforesaid [as the case may be] to E.F.,  
gentleman.

By virtue of the authority contained in the Ballot Act, 1872, and of any other law now in force, enabling me in that behalf, I (A.B.) do hereby nominate and appoint you to preside at the taking of the poll at the [state whether at the principal place of election, or at which of the several polling places] for the said county [or for the district in the said division] [or for the district in the said city (or borough)] [as the case may be] at the now ensuing election of members to serve in Parliament for the said county [or division] [or city or borough] [as the case may be], and as such presiding officer to exercise all such



powers and do all such acts as by the said Act, or by any other Act now in force respecting elections, you are lawfully authorised to do.

Given under the seal of my office [or under my hand] [as the case may be], this       day of       A.D.       .

A.B.,

High sheriff [or deputy returning officer]  
or [returning officer], [as the case may be].

### 13.

*Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous characters, and placarded outside every polling station and in every compartment of every polling station.<sup>15</sup>*

The voter may vote for       candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus **X**.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than       candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

*Note.*—These directions shall be illustrated by examples of the ballot paper.

### 14.

#### *Statutory Declaration of Secrecy.<sup>16</sup>*

I solemnly promise and declare, that I will not at this election for do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

*Note.*—The section must be read to the declarant by the person taking the declaration.

### 15.

#### *Declaration of inability to read.<sup>17</sup>*

I, A.B., of       , being numbered       on the register of voters for the county [or borough] of       , do hereby declare that I am unable to read.

A.B.,       his mark.

day of       .

I, the undersigned, being the presiding officer for the       polling station for the county [or borough] of       , do hereby certify, that the above

<sup>15</sup> See p. 26, *supra*.

<sup>16</sup> See p. 45, *supra*.

<sup>17</sup> See p. 29, *supra*.

declaration, having been first read to the above named A.B., was signed by him in my presence with his mark.

Signed C.D.,

Presiding officer for                      polling station                      for the county [or  
borough] of                      .  
day of                      .

---

## 16.

*Statements of Right of Petition.*

That at the last election of a member (or members) to serve in this present Parliament for the borough of                      your petitioners were registered electors of the said borough, and had a right to vote at the said election; [or were registered electors of the said borough, and did vote at the said election]; [or were registered electors of the said borough, and had a right to vote and did vote at the said election].

That your petitioner was a candidate at the last election of a member (or members) to serve in the present parliament for the borough of                      and was not disqualified to be returned and to sit as a member for the said borough; [or was a candidate at the last election of a member or members to serve in the present parliament for the borough of                      and claims to have had and had a right to be returned at the said election].

---

## 17.

*Personation Questions.<sup>18</sup>*

1. Are you the same person whose name appears as A.B. on the register of electors now in force for the parliamentary county of                      [or for the division of the parliamentary county of                      ] or for the parliamentary borough of                      [or for the division of the parliamentary borough of                      ] [as the case may be]?

2. Have you already voted, either here or elsewhere, at this election for the parliamentary county of                      [or for the division of the parliamentary county of                      ] or for the parliamentary borough of                      [or for the division of the parliamentary borough of                      ] [as the case may be]?

---

## 18.

*Personation Oath.<sup>18</sup>*

"I swear by Almighty God [or I do solemnly sincerely and truly declare and affirm *as the case may be*] that I am the same person whose name appears as A. B. on the register of electors now in force for the parliamentary county of                      [or for the division of the parliamentary county of                      ] or for the parliamentary borough of                      [or for the division of the parliamentary borough of                      ] [as the case may be] and that I have not before voted, either here or elsewhere, at the present election for the parliamentary county of                      [or for the division of the parliamentary county of                      ] or for the parliamentary borough of                      [or for the division of the parliamentary borough of                      ] [as the case may be]."

<sup>18</sup> See pp. 29, 50, 51, *supra*.

## 19.

Questions to prevent an elector voting more than twice.

1. In the case of a man voting in respect of a residence qualification—  
Have you already voted at this general election in respect of a residence qualification?
2. In the case of a man voting in respect of a qualification other than a residence qualification—  
Have you already voted at this general election in respect of a qualification other than a residence qualification?
3. In the case of a woman voting at an election other than a university election—

Have you already voted at this general election?

[NOTE.—Unless the answer to the question is in the negative the woman shall not vote unless she satisfies the presiding officer that her previous vote was given at a university election.]

20.

*General Form of Petition.*<sup>19</sup>

(England and Ireland.)

In the High Court of Justice.

King's Bench Division.

The Parliamentary Elections Act, 1868.

Election for [state the place] holden on the      day of      , A.D.

The petition of A., of [or of A., of , and B., of , as the case may be], whose names [or names] are subscribed.

1. Your petitioner, A., is a person who voted [or had a right to vote, as the case may be] at the above election [or claims to have had a right to be returned at the above election, or was a candidate at the above election]; and your petitioner, B., [here state in like manner the right of each petitioner].

2. And your petitioners state that the election was holden on the day of \_\_\_\_\_, A.D. \_\_\_\_\_, when A.B., C.D., and E.F., were candidates, and the returning officer has returned A.B. and C.D. as being duly elected.

3. And your petitioners say that [here state (briefly) the grounds and facts on which the petitioners rely].

Wherefore your petitioners pray that it may be determined that the said A.B. was not duly elected or returned, and that the election was void [or that the said E.F. was duly elected, and ought to have been returned, or as the case may be].

(Signed) A.  
B.

21.

*General Form of Petition.*<sup>20</sup>

(Scotland.)

Parliamentary Elections Act, 1868.

Election for [state place] holden on the                      day of                      19 .

The petition of A. [name and designation], or of A., B., and C. [names and designations] whose names are subscribed hereto.

<sup>19</sup> See Rule 5 of the Election Petition Rules set out in Appendix III., p. 357, *supra*.

<sup>20</sup> General Rules (Scotland), Rule 2, Sched. (B).



Your petitioner, A., who voted [or had a right to vote, as the case may be] at the above election [or claims to have had a right to be returned at the above election, or was a candidate at the above election], and your petitioner B. [here state in like manner the right of each petitioner].

And your petitioners state that the election was holden on the       day of       when A.B. and C.D. were candidates, and the returning officer has returned A.B. as being duly elected.

And your petitioners say that [here state the facts on which the petitioners rely].

Wherefore your petitioners pray that it may be determined that the said A.B. was not duly elected or returned, and that the election was void [or that the said C.D. was duly elected, and ought to have been returned, as the case may be].

In respect whereof, &c.

[Signed by petitioners.]

## 22.

### *Petition alleging Corrupt Practices and Praying that Election may be declared Void.*

In the High Court of Justice.

King's Bench Division.

The Parliamentary Elections Act, 1868.

Election for the county of       holden on the       and       days of       in the year of our Lord

The petition of A.B., of       in the county of       .

1. Your petitioner is a person who voted at the above election.

2. Your petitioner states that the said election was holden on the day of       , in the year of our Lord       , when C.D. and E.F. were candidates; and the returning officer has returned the said E.F. as being duly elected.

3. Your petitioner says that the said E.F. was by himself, his agents or agent and other persons on his behalf, guilty of bribery before, during and after the said election, whereby he was and is incapacitated to serve in the present parliament for the said county, and the said election and return of the said E.F. was and is wholly null and void.

4. Your petitioner further says that the said E.F. was by himself, his agent or agents and other persons on his behalf, guilty of treating before, during and after the said election, whereby he was and is incapacitated to serve in the present parliament for the said county, and the said election and return of the said E.F. was and is wholly null and void.

5. Your petitioner further says that the said E.F. was by himself, his agents or agent and other persons on his behalf, guilty of undue influence before, during and after the said election, whereby he was and is incapacitated to serve in the present parliament for the said county, and the said election and the return of the said E.F. was and is wholly null and void.

6. Your petitioners also say that the said E.F. personally engaged before, during or at the said election to which this petition relates as a canvasser or agent for the management of the said election a person reported guilty of corrupt practices by the report of [here fill in description of court, date of report, &c.] knowing that the persons or person so engaged had been so reported guilty of corrupt practices within seven years previous to such engagement, whereby the said election and return of the said E.F. was and is wholly null and void.<sup>21</sup>

Wherefore your petitioner prays that it may be determined

<sup>21</sup> See Parliamentary Elections Act, 1868, s. 44, p. 279, *supra*.

that the said E.F. was not duly elected or duly returned, and that the said election and return of the said E.F. was and is wholly null and void.

## 23.

*Petition alleging Corrupt and Illegal Practices and Disqualification and Claiming Seat.*

In the High Court of Justice.

King's Bench Division.

The Parliamentary Elections Act, 1868.

Election for the borough of \_\_\_\_\_, holden on the \_\_\_\_\_ and \_\_\_\_\_ days of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

The petition of A.B. of \_\_\_\_\_, in the county of \_\_\_\_\_, whose name is subscribed.

1. Your petitioner was a candidate at the above election.

2. And your petitioner states that the said election was holden on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_ when C.D. and your petitioner A.B. were candidates, and the returning officer has returned C.D. as being duly elected.

3. And your petitioner further says, that the said C.D. was by himself and other persons on his behalf guilty of bribery, before, during and after the said election, whereby he was and is incapacitated from serving in parliament for the said borough of \_\_\_\_\_, and the said election and return of the said C.D. were and are wholly null and void.

4. And your petitioner further says, that many persons voted at the said election and were reckoned upon the poll for the said C.D. who were guilty of bribery, and who were bribed to vote thereat for him, and that the said votes of all such persons were null and void and ought now to be struck off the poll.

5. And your petitioner further says, that many persons who were registered as voters for the borough of \_\_\_\_\_ were admitted to vote and did vote in favour of the said C.D. and that the said persons who so voted as aforesaid were and had been disqualified by legal incapacity to vote and were prohibited by law from voting by virtue of divers statutes in force at the time of the said election, and such votes ought now to be struck off the poll.

6. And your petitioner further says, that many persons, who were disqualified to vote at such election by reason of their holding or having held disqualifying employments, or having been hired or employed for the purposes of the election for reward by and on behalf of the said C.D. at the said election as polling agents, were, nevertheless, admitted to vote and did vote for the said C.D., and that such votes ought now to be struck off the poll.

7. And your petitioner further says, that persons personated and voted as and for certain electors whose names appear on the register of the said borough, but who did not themselves vote, and that the votes so recorded ought now to be struck off the poll.

8. And your petitioner further says, that the said C.D. obtained an apparent and colourable majority over your petitioner the said A.B., whereas in truth and in fact your petitioner the said A.B. had a majority of votes of the electors of the said borough who voted at the said election, and who were at the time thereof duly qualified by law to vote, and was duly elected as a member to serve in Parliament for the said borough, and ought to have been returned as such member.

Wherefore your petitioner prays that it may be determined that the said C.D. was not duly elected or returned, and that his election and return were and are wholly null and

void, and that your petitioner the said A.B. was duly elected, and ought to have been returned.

(Signed) A.B.

24.

*Petition alleging Corrupt and Illegal Practices and Claiming Seat.*

In the High Court of Justice.

King's Bench Division.

The Parliamentary Elections Act, 1868.

Election for the borough of , in the county of , holden on the day of , in the year of our Lord .  
The petition of A.B. of , in the county of , and of , in the county of , and C.D., of , in the city of , whose names are subscribed.

1. Your petitioners were respectively candidates at the said election and claim to have a right to have been returned thereat.

2. And your petitioners state, that the election was holden on the day of , in the year of our Lord , when E.F., G.H., your petitioner A.B., and your petitioner C.D., were candidates, and the returning officer has returned the said E.F. and G.H. as being duly elected.

3. And your petitioners say, that the said E.F. and G.H. were by themselves and each of them, and by other persons on their behalf and on behalf of each of them guilty of undue influence before, during and after the said election, whereby they and each of them were and are incapacitated to serve in the present Parliament for the said borough of , and the said election and return of the said E.F. and G.H. were and are null and void.

4. That divers persons voted at the said election and were reckoned upon the poll of the said E.F. and G.H. who were before and at and after the said election guilty of undue influence, and that all such persons were thereby disqualified from voting and their votes ought now to be struck off the poll.

5. That divers persons voted at the said election and were reckoned upon the poll of the said E.F. who were before and at and after the said election guilty of undue influence, and that all such persons were thereby disqualified from voting, and their votes ought now to be struck off the poll of the said E.F.

6. That divers persons voted at the said election and were reckoned upon the poll of the said G.H. who were before and at and after the said election guilty of undue influence, and that all such persons were thereby disqualified from voting, and their votes ought now to be struck off the poll of the said G.H.

7. That divers persons voted at the said election and were reckoned upon the poll of the said E.F. and G.H. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their vote ought now to be struck off the poll.

8. That divers persons voted at the said election and were reckoned upon the poll of the said E.F. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their votes ought now to be struck off the poll of the said E.F.

9. That divers persons voted at the said election and were reckoned upon the poll of the said G.H. who were registered electors of the said borough of by the revising barrister, but had since then and before



the said election become disqualified for and incapable of lawfully voting at the said election and that their votes ought now to be struck off the poll of the said G.H.

10. That the majority of votes declared by the returning officer in favour of the said E.F. and G.H. and of each of them respectively, was only an apparent and colourable majority, inasmuch as the votes of divers persons were accepted and received on the said poll in favour of the said E.F. and G.H., and in favour of the said E.F. separately from the said G.H., and in favour of the said G.H. separately from the said E.F., who were not legally entitled and had no right to vote at the said election, and that the real majority of good and legal votes polled at the said election was in favour of the said A.B. and C.D. and each of them over the said E.F. and G.H. and over each of them, and that the said A.B. and C.D. were duly elected members to serve in Parliament and ought to be returned as such.

Wherefore your petitioners pray that it may be determined that the said E.F. and G.H. were not nor was either of them duly elected or returned, and that the election and return of the said E.F. and G.H. and each of them was and were null and void, and that the said A.B. and C.D. and each of them were respectively duly elected and ought to have been returned to serve as members for the said borough of            in this present Parliament.

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25.

*Petition<sup>22</sup> alleging False Statements of Fact concerning the Personal Character of Candidate.*

In the High Court of Justice.

King's Bench Division.

The Parliamentary Elections Act, 1868,  
and

The Corrupt and Illegal Practices Prevention Acts, 1883 and 1895.

Election for the A.B. division of the city of A., holden on the            day of  
19    .

The petition of D.E. of            , in the city of            , whose name  
is subscribed.

1. Your petitioner is a person who was a candidate at the above election.  
2. The said election was holden on the            day of            , 19    , when  
F.G. and your petitioner were candidates, and the returning officer has  
returned F.G. as being duly elected.

3. And your petitioner says that during the said election the said F.G.  
by himself and his election agent and by other persons on his behalf made  
and published false statements of fact in relation to the personal character  
and conduct of your petitioner for the purpose of affecting the return of  
your petitioner at the said election.

4. And as to such of the said illegal practices as were committed by  
an agent of the said F.G. other than his election agent your petitioner  
further says that F.G. or his election agent authorised or consented to  
the committing thereof by such other agent or paid for circulation of the  
false statement constituting such illegal practice and that the election of  
the said F.G. was procured or materially assisted in consequence of the  
making and publishing of such false statements.

5. That such false statements were contained in a handbill published and  
distributed in the said division on the day of the said election in the words  
and figures following:—

<sup>22</sup> See *Sunderland* (1896), 5 O. & H. (1901), *ibid.* 170; *Attercliffe* (1906),  
53; *St. George's* (1895), *ibid.* 102, 103; *ibid.* 218.  
*York* (1898), *ibid.* 118; *Monmouth*

[Set forth the false statements complained of.]

6. By reason of the matters hereinbefore set out the said F.G. was and is incapacitated from serving in the present Parliament for the said A.B. division of the said city and the said election and return of the said F.G. were and are wholly null and void.

Wherefore your petitioner prays that it may be determined that the said F.G. was not duly elected or returned and that his election and return were and are wholly null and void.

Dated the            day of            19   .

## 26.

*References to other Precedents of Petitions will be found in the following cases.*

Illegal conduct of returning officer :

*Carnarvon* (1833), P. & K. 106. In admitting tenders with actual votes.

*Limerick*, *ibid.* 355. At the poll.

*Waterford* (1834), B. & Aust. 616. *Athlone*, *ibid.* 660. In refusing legal votes.

*Drogheda* (1869), 1 O'Mal. & Hard. 252. *Roxburgh* (1869), F. & F. 469. *Cork* (1834), B. & Aust. 534. Riot and intimidation.

*Carnarvon* (1869), P. & K. 106. *Canterbury* (1835), K. & O. 131. *Cardigan* (1842), B. & Aust. 265. Illegal return.

*2nd Dungarvan* (1834), K. & O. 6. *2nd Montgomery* (1834), P. & K. 462. *2nd Newcastle-under-Lyme* (1842), B. & Aust. 564. Sitting member disqualified by bribery at a former election.

*Penryn and Falmouth* (1834), K. & O. 440. *Sudbury* (1842), B. & Aust. 239. Bribery and treating.

*Wakefield* (1842), B. & Aust. 295. Return by person not returning officer.

*Longford* (1870), 2 O'Mal. & Hard. 6. Complaining that notice of election was not given at the time required by the statute.

*Galway County* (1872), 2 O'Mal. & Hard. 46. Petition allowing disqualification of respondent, and notice thereof, and that votes given for him were thrown away.

*Harwich* (1857), 1 P. R. & D. 314. Premature closing of the poll.

*Canterbury* (1834), K. & O. 131. Returning officer acting with partiality in the conduct of the election, and making false return.

*Dungarvan* (1834), K. & O. 6. Member disqualified by bribery at a former election.

*Gloucester* (1873), 2 O. & H. 59. Personation.

*Norwich* (1874), 2 O. & H. 38. Bribery and treating at previous election.

*Harwich*, *ib.* 77. Electors prevented from voting by misconduct of returning officer.

*Dudley*, *ib.* 115. Rioting and adjournment of poll.

*Bolton*, *ib.* 138. Violation of provisions of secrecy in ballot, illegal payments.

*Kidderminster*, *ib.* 170. Payment in respect of corrupt practices.

*Poole*, *ib.* 123. Payments after the election in pursuance of corrupt offers and agreements previously made.

*Athlone*, *ib.* 186. Ballot papers wrongly rejected by the returning officer: returning officer a respondent.

*Mayo*, *ib.* 191. Nomination wrongly rejected by returning officer: returning officer a respondent.

*Warrington* (1869), 1 O. & H. 42. Voters prevented from voting by confusion at polling places, caused by defective arrangements and incompetence of returning officer.

*Launceston*, *ib.* 129. Voters bribed by being allowed to shoot rabbits.

*Renfrew*, *ib.* 213. Form of petition unsuccessfully objected to, but petitioners ordered to pay costs of application.

*Tipperary* (1875), 3 O. & H. 19, 20. 1st petition, voting for disqualified candidate with notice of disqualification; 2nd petition, election of disqualified candidate: illegal conduct of returning officer in accepting nomination of disqualified candidate.

*Down* (1880), 3 O. & H. 115. Undue influence, intimidation, and illegal payments.

*Worcester* (1880), 3 O. & H. 184. Polling places not kept open for time required by law.

*Berwick-on-Tweed* (1880), *ib.* 178. Ballot papers erroneously rejected and claim to have votes of disqualified persons struck off.

*Thornbury* (1886), 4 O. & H. 65. Ballot papers improperly admitted and rejected.

*Norwich*, *ib.* 84. Payment of election expenses otherwise than by election agent.

*South Meath* (1892), *ib.* 130. Improper exercise of spiritual influence and intimidation.

*Trench v. Nolan (Galway)* (1872), 7 Ir. R. C. L. 445; *Cremer v. Lowles* (1896), 1 Q. B. 504.

## 27.

*Receipt for Petition to be given by Master.*<sup>23</sup>

Received on the       day of       at the master's office a petition touching the election of A.B., a member for       purporting to be signed by (*insert the names of petitioners*).

C.D., *Master's Clerk.*

## 28.

*Recognisance.*<sup>24</sup>

Be it remembered that on the       day of       , in the year of our Lord 19       , before me [*name and description*] came A.B., of [*name and description as above described*] and acknowledged himself [*or severally acknowledged themselves*] to owe to our Sovereign Lady the Queen the sum of one thousand pounds [*or the following sums*] (that is to say) the said C.D., the sum of £       , the said E.F., the sum of £       , the said G.H., the sum of £       , and the said J.K., the sum of £       , to be levied on his [*or their respective*] goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognisance is that if [*here insert the names of all the petitioners, and if more than one, add, or any of them*] shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him [*or them*], relating to the [*here insert the name of the borough, or county*] which shall become payable by the said petitioner [*or petitioners, or any of them*] under the Parliamentary Elections Act, 1868, to any person or persons, then this recognisance to be void, otherwise to stand in full force.

Signed  
[*Signature of sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the       day of       at       , before me,

C.D.,  
A justice of the peace [*or as the case may be*].

<sup>23</sup> See Petition Rules, Rule 1, p. 357,       <sup>24</sup> See p. 205, *supra*.  
*supra*.



29.

*Affidavit of Sufficiency.*<sup>25</sup>

In the High Court of Justice,  
King's Bench Division,  
Parliamentary Elections Act, 1868.

I, A.B. of [as in recognisance], make oath and say that I am seised or possessed of real [or personal] estate above what will satisfy my debts of the clear value of £

Sworn, &amp;c.

30.

*Application to Amend Petition.*<sup>26</sup>

[Title as usual.]

Let all parties concerned attend before the Honourable Mr. Justice , at Room of the Royal Courts of Justice, Strand, London, W.C., on the day of 19 , at o'clock in the forenoon on the hearing of an application on the part of the petitioner that he may be at liberty to amend the petition herein under section 40, sub-sections (2), (3), of the Corrupt and Illegal Practices Prevention Act, 1883, by alleging

[Here set out the amendment.]

Dated the day of 19 .  
(Signed)

Thomas Lex & Co.,  
101, Justice Road, London.  
[Petitioner's Agents.]

To the Respondent  
and  
his Agents.

31.

*Affidavit in Support of Foregoing Application.*<sup>27</sup>

[Title as usual.]

I, A.B., of a member of the firm of the same address make oath and say as follows:—

1. My firm are the solicitors and agents for the petitioner herein.
2. One C.D., of was duly appointed election agent of the respondent in the above mentioned election.
3. The return respecting the election expenses of the said respondent was received on the 19 , by the returning officer for the borough of , from the said C.D., as the respondent's election agent, and the declarations by the said respondent and his said agent were respectively received by the said returning officer on the same date.
4. These dates are confirmed by a telegram which I have to-day received from the returning officer; such telegram is now produced and shown to me marked A.B., and was in answer to an inquiry made by me as to what the said dates were.
5. The petitioner has been advised to apply to this honourable Court for leave to amend the petition under section 40, sub-sections (2) and (3), of the Corrupt and Illegal Practices Prevention Act, 1883, and the amend-

<sup>25</sup> See Petition Rules, Rule 28, in Appendix III., p. 360, *supra*.

<sup>26</sup> This application should be supported by an affidavit setting forth the facts giving rise to the desired amend-

ment.

<sup>27</sup> The returning officer should corroborate the facts as to the declaration and return of election expenses.

ments that the said petitioner proposes to make are shown in red ink in the copy amended petition exhibited hereto and marked A.B.

(Signed)

Sworn, &c.

A.B.

32.

*Order for Amendment of Petition.*

[Title as usual.]

Upon hearing counsel for both sides, and after reading the affidavit of A.B., and the affidavit of E.F., it is ordered that the petitioner be at liberty to amend the petition herein under section 40, sub-sections (2), (3), of the Corrupt and Illegal Practices Prevention Act, 1883, by alleging

[Stating the amendments allowed.]

And it is further ordered that the costs of and occasioned by this application be costs in the said petition. Fit for counsel.

Dated the            day of            19 .

33.

*Summons to Strike Out Petition under the Corrupt Practices Act of 1895.<sup>28</sup>*

[Title as usual.]

Let all parties concerned attend before the Honourable Mr. Justice at his Chambers, Room No.            of the Royal Courts of Justice, Strand, London, on the            day of            19 , at            o'clock in the noon on the hearing of an application on the part of the respondent.

1. For an Order that the words and figures

[Here set forth the words and figures which are not statements of fact]

in paragraph 5 of the petition be struck out on the ground that the said words are not statements of fact in relation to the personal character or conduct of the petitioner within the meaning of the Corrupt and Illegal Practices Prevention Act, 1895, and are incapable of being understood as such.

Dated the            day of            19 .

A. I. & Co.,

66, Law Lane,

London, E.C.

[Agents for the respondent.]

34.

*Order Striking Out.*

Upon hearing counsel for the respondent and the petitioner it is ordered that the words and figures

[Identifying the same]

in paragraph 5 of the petition be struck out on the ground that the said words are not statements of fact in relation to the personal character or conduct of the petitioner within the meaning of the Corrupt and Illegal Practices Prevention Act, 1895, and are incapable of being understood as such.

And it is further ordered that the costs of and occasioned by this application be the respondent's in any event.

Fit for counsel.

Dated the            day of            19 .

<sup>28</sup> See Attercliffe (1906), 5 O. & H. 218.

## 35.

*Summons for Particulars.*<sup>29</sup>

[Title as usual.]

Let all parties concerned attend before the Honourable Mr. Justice at his Chambers, Room No.        of the Royal Courts of Justice, Strand, London, on the        day of        19        , at        o'clock in the noon, on the hearing of an application on the part of the respondent.

1. For an order that the petitioner do within        days deliver to the respondent or his agent full particulars in writing stating: (1) under paragraph        of the petition [*setting forth the particulars sought*]; (2) under paragraph        of the petition, &c.

And that in default of delivery of the said particulars within the time ordered the petitioners be precluded at the trial of the said petition from going into any case in respect of which the aforesaid particulars have not been duly delivered.

And that the costs of and occasioned by this application be costs in the petition.

Dated the        day of        19        .

George Lex & Co.,  
99, Petition Lane,  
London, E.C.

To [*the Petitioner*]  
and to  
[*his Agent.*]

## 36.

*Order for "Short" Particulars.*<sup>30</sup>

[Title as usual.]

Upon hearing counsel on both sides—

It is ordered that the petitioner do, within ten days from the date of this order, deliver to the respondent or his agent particulars in writing of:—

1. The nature of the corrupt practices, of undue influence alleged in paragraph 3 of the petition to have been committed by the respondent's agents before, during and after the said election contrary to the provisions of the Corrupt and Illegal Practices Prevention Act, 1883.

2. The nature of the illegal practices alleged in paragraph 7 of the petition to have been committed by the respondent and his election agent in failing to comply with the requirements of section 33 of the Corrupt and Illegal Practices Prevention Act, 1883.

3. The nature of the illegal practices alleged in paragraph 8 of the petition, stating under which part of the First Schedule and which number of such part the objection is made.

4. The nature of the illegal practice alleged in paragraph 9 of the petition to have been committed by the respondent's election agent and the class of persons alleged to have been induced and procured to vote at the said election contrary to the said Act.

5. The class of the money payments alleged in paragraph 10 of the petition to have been personally and knowingly provided by the respondent's election agent contrary to the provisions of the said Act and the nature of the expenses incurred in excess of the maximum amounts respectively allowed by the said Act.

And it is ordered that the petitioner be excluded at the trial of this petition from giving any evidence of the matters above mentioned in respect of which the aforesaid particulars have not been duly delivered.

Fit for counsel. Certificate for leaders.

Dated this 15th day of March, 19        .

<sup>29</sup> See the following two orders as to "Short" and "Long" particulars.

<sup>30</sup> Order of Grantham, J., in *Maidstone* (1906).



## 37.

*Order for "Long" Particulars.<sup>1</sup>**[Title as usual.]*

Upon hearing counsel on both sides—

It is ordered that the petitioner do, ten clear days before the day appointed for the trial of this petition, if there be under 80 charges, or if there be over 80 charges, made by the petitioner, then twelve clear days before the day appointed for the trial of this petition, or if there be over 120 charges, then sixteen clear days before the day appointed for the trial of this petition, deliver to the respondent or his agents particulars in writing of:—

1. The names of all persons alleged in paragraph 3 of the petition to have been bribed, treated, or unduly influenced and by whom, with the address and number if on the register, and, if none, the occupation of each of the same respectively, the time or times when and the place or places where each act of bribery, treating, or undue influence is alleged to have been committed, and the amount, value and nature thereof.

2. The names of all persons by and to whom it is alleged in paragraph 4 of the petition that payments for the conveyance of electors to and from the poll were made, with the address and number on the register, and, if none, the occupation of each of the same respectively, together with in each case the amount of the payment, and when, where and in what manner the payment was made, and whether for the hiring of horses and carriages or other vehicles, or for railway fares, or how otherwise and when to and from what places or polling stations respectively, together with the registered numbers of such vehicles and drivers, if any, in each case where known.

3. The place or places where and the time or times when the general bribery alleged in paragraph 5 of the petition was committed, and the character, amount and extent thereof and on whose behalf committed, and approximately the number of persons bribing and bribed respectively.

4. The respects in which the respondent, by himself or his election agent, failed to comply with the requirements of section 33 of the Corrupt and Illegal Practices Prevention Act, 1883, alleged in paragraphs 6 and 7 of the petition, giving the details of all expenses and payments made by the respondent or his election agent and alleged to have been untruly stated or omitted in the return and the particulars in which they are alleged to be untrue, and further particulars in which it is alleged that the declarations of the respondent and his election agent did not comply with the form in the Second Schedule to the said Act.

5. The number of clerks and messengers in excess of the number allowed under Part I. (4) of the First Schedule of the said Act alleged to have been employed by the respondent's election agent in paragraph 8 of the petition and in paragraph 2 (a) of the particulars relating thereto, together with the names and addresses of each of the same respectively, and further the amount of expenses alleged in paragraph 8 of the petition and paragraph 2 (b) of the particulars relating thereto to have been incurred in excess of the maximum allowed by the provisions of the said Act, and the names of the persons by and with whom the same were incurred, with the address in each case and the amount of the payment alleged to have been made and when and where the payments were made and the purposes for which the same were made respectively.

6. The names of all prohibited persons and how and in what way prohibited alleged in paragraph 9 of the petition and paragraph 3 of the particulars relating thereto to have been induced or procured to vote and by whom respectively, with the address and number on the register of each of the same respectively, and the place or places where each act of inducing or procuring is alleged to have taken place and the nature and character

<sup>1</sup> Order of Grantham, J., in *Maidstone* (1906).

thereof, and the polling station at which the said persons so induced or procured voted respectively.

7. The names and addresses of all persons to whom payments are alleged to have been made in paragraph 10 of the petition, and paragraph 4 (a) of the particulars relating thereto, together with the number on the register, if any, of each such person, and the time and place when and where each such payment is alleged to have been made, and the amount of each such payment.

The amount of the expenses alleged in paragraph 10 of the petition, and paragraph 4 (b) of the particulars relating thereto, to be in excess of the maximum amounts allowed by the said Act, and the names and addresses of the persons by and with whom the said expenses were incurred, and the number on the register of each of the said persons respectively, if any, and further particulars of expenses alleged to have been incurred in paragraphs 4 (b) of the said particulars for printing, advertising, publishing, issuing and distributing addresses and notices, stationery messages, postages, telegrams, public meetings, and services of clerks and messengers.

It is further ordered that the petitioner be precluded at the trial from giving evidence in support of any charge or case in which the aforesaid particulars have not been duly delivered without the leave of the judges trying or about to try the petition.

And that if the petitioner after delivery of the particulars discovers any further matters on which he wishes to rely, he must forthwith give notice to the other side.

And that the costs of this application be costs in the petition.

Fit for counsel. Certificate for leaders.

Dated the 10th day of April, 19 .

### 38.

#### *Particulars of Bribery.*

In the High Court of Justice.

King's Bench Division.

In the matter of the petition of A.B., complaining of the election and return of C.D., Esquire, for the county of .

#### *Particulars of Bribery delivered pursuant to the order of .*

Name of Voter Bribed.	Persons guilty of Bribery in respect of such Voter within the meaning of the Corrupt Practices Prevention Act. N.B.—The Residence of the persons referred to is unless otherwise mentioned.
Black, John . .	The above-named respondent and Alfred Price, Arthur Burt, Thomas Brown and John Clark.
Hart, Charles . .	The persons last aforesaid and James Green.
Jones, Joseph . .	The said respondent, George Grace, William Jones, James Clark, and others unknown.
Robinson, George .	Alfred Rice, James Clark, John White, whose name and address are at present unknown, or some or one of them, and others unknown.

Yours, &c.,

[name]

To Mr.

Agent [or solicitor] for the  
respondent, C.D.

Agent [or solicitor] for the  
petitioner, A.B.

Dated this day of 19 .

## 39.

*Particulars of Treating.*

In the High Court of Justice.

King's Bench Division.

In the matter of the petition of A.B., complaining of the election and return of C.D., Esquire, for the county of .

*Particulars of Treating delivered pursuant to the order of .*

Name of Voter.	Person or Persons guilty of Treating in respect of such Voter within the meaning of the Corrupt Practices Prevention Act. <i>N.B.</i> —The residence of the persons referred to is unless otherwise mentioned.	Place of Treating.	Time of Treating.
Smith, George .	The above-named respondent and [other persons referred to as in last form].	The "Golden Fleece."	Between 1st and 8th of January, 1906.
Jones, John. .	The said respondent and [other persons as above].	The "Goat and Compasses."	"

Yours, &amp;c.,

To Mr.

Agent [or solicitor] for the respondent, C.D.

Dated this day of 19 .

[name]

Agent [or solicitor] for the petitioner, A.B.

## 40.

*Particulars of Undue Influence.*

In the High Court of Justice.

King's Bench Division.

In the matter of the petition of A.B., complaining of the election and return of C.D., Esquire, for the county of .

*Particulars of Undue Influence delivered pursuant to the order of .*

Name of Voter.	Person or Persons guilty of Undue Influence in respect of such Voter within the meaning of the Corrupt Practices Prevention Act. <i>N.B.</i> —The residence of the persons referred to is unless otherwise mentioned.
Brown, John . .	The above-named respondent and [insert here the names of persons charged with unduly influencing].
Robinson, James .	The persons above mentioned.
Smith, Arthur . .	The said respondent and [other persons as above].

Yours, &amp;c.,

To Mr.

Agent [or solicitor] for the respondent, C.D.

Dated this day of 19 .

[name]

Agent [or solicitor] for the petitioner, A.B.



41.

*Notice of Trial.*<sup>2</sup>

## Parliamentary Elections Act, 1868.

Election petition of            county [or borough] of  
 Take notice that the above petition [or petitions] will be tried at  
 on the            day of            and on such other subsequent days as may be  
 needful.

Dated the            day of            .

Signed, By order,

A.B.,

The master appointed under the above Act.

42.

*Judge's Order to compel Attendance of Witness.*<sup>3</sup>

The order of a judge to compel the attendance of a person as a witness  
 may be in the following form:—

Court for the trial of an election petition for [complete the title of the  
 court] the            day of            To A.B. [describe the person] You are hereby  
 required to attend before the above court at [place] on the            day of  
                                  at the hour of [or forthwith, as the case may be] to be examined as  
 a witness in the matter of the said petition, and to attend the said court  
 until your examination shall have been completed.

As witness my hand,

Judge of the said court.

43.

*Warrant for Committal for Contempt.*<sup>4</sup>

At a court holden at            on            for the trial of an election petition  
 for the county [or borough] of            before            two of the judges  
 for the time being for the trial of election petitions in England, pursuant  
 to the Parliamentary Elections Act, 1868.

Whereas A.B. has this day been guilty, and is by the said court adjudged  
 to be guilty, of a contempt thereof, the said court does therefore sentence  
 the said A.B. for his said contempt to be imprisoned in the            gaol for  
                                  calendar months, and to pay to our Lord the King a fine of £            ,  
 and to be further imprisoned in the said gaol until the said fine be paid;  
 and the court further orders that the sheriff of the said county [or as the  
 case may be], and all constables and officers of the peace of any county or  
 place where the said A.B. may be found, shall take the said A.B. into  
 custody, and convey him to the said gaol, and there deliver him into the  
 custody of the gaoler thereof, to undergo his said sentence; and the court  
 further orders the said gaoler to receive the said A.B. into his custody,  
 and that he shall be detained in the said gaol in pursuance of the said  
 sentence.

Signed the            day of            .

W.G.  
C.D.<sup>2</sup> See Petition Rules, Rule 33.<sup>4</sup> *Ibid.* Rule 42.<sup>3</sup> *Ibid.* 41.

## 44.

*Notice of Application for Leave to Withdraw.*<sup>5</sup>

Parliamentary Elections Act, 1868.

County [or borough] of

Petition of [state petitioners], presented      day of

The petitioner proposes to apply to withdraw his petition upon the following ground [here state the ground], and prays that a day may be appointed for hearing his application. Dated this      day of

(Signed)

## 45.

*Notice of having lodged such Notice.*<sup>6</sup>

Parliamentary Elections Act, 1868.

In the Election Petition for      , in which      is Petitioner and Respondent,

Notice is hereby given that the above petitioner has on the      day of      lodged at the master's office, notice of an application to withdraw the petition, of which notice the following is a copy—(set it out).

And take notice that, by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

## 46.

*Order for Re-count where Petition prays only for a Re-count.*

[Title as usual.]

Upon hearing counsel for the petitioner and respondent and upon reading the affidavits of petitioners, A.B., C.D., and E.F., it is ordered:—

1. That the Clerk of the Crown in Chancery, by himself or his deputy, do produce to      , at the Election Petition Office, Room 175, Royal Courts of Justice, Strand, London, on a day to be appointed by the said      , the counted, tendered, and rejected ballot papers in his custody, which relate to the Parliamentary Election for the J.K. division of the county of L. holden on the      day of      19      , and that the counted and rejected ballot papers may be then and there inspected, and the votes recorded therein be re-counted (all necessary precautions being taken to preserve the secrecy of the ballot).

2. And that the petitioner and respondent with their respective counsel, solicitors, and agents, shall be at liberty to be present on such inspection and re-count, which shall be continued from day to day until concluded with power to adjourn, and subject to the consent of counsel or solicitor being given on both sides.

3. That the said      do report the result of the said re-count to the Court and that such only of the ballot papers as may at the end of the re-count be in dispute, be annexed to and form part of the said report.

4. That petitioner and respondent may be at liberty to take copies or photographs of the disputed ballot papers.

5. That at the request of either party the case raised by the petition be stated as a special case, such special case to be stated by the said      , the said report being incorporated in the special case.

<sup>5</sup> See Petition Rules, Rule 45, and see p. 207, *supra*.

<sup>6</sup> *Ibid.* Rule 47.

6. That the costs of and occasioned by the application and of the said inspection and re-count be costs in the petition.

Fit for counsel.

Dated the       day of       19 .

---

47.

[Usual heading.]

*Order where Petition Prays for Re-count inter alia.*

Upon hearing counsel for the petitioner and respondent herein and upon reading the affidavit of A.B., it is ordered that (1) the Clerk of the Crown in Chancery by his deputy do produce before Mr.       at Room No. 113, Royal Courts of Justice, on the       day of       19 , at       o'clock in the forenoon, all the counted, tendered, or rejected ballot papers in his custody, which relate to the above election, holden on the day of       , 19 , and that the counted and rejected ballot papers be then and there inspected and re-counted (all necessary precautions to be taken to preserve the secrecy of the ballot) and that the sealed packets relating to the election, if necessary, be opened by the said Mr.       for the purpose of taking therefrom the tendered votes list for the inspection of the parties, and that the said Mr.       , on the request of counsel on both sides, do open the packet of tendered ballot papers and inform the parties of the number of the tendered ballot papers therein and the names of the persons tendering such papers, but that no other information be given, and that the said packets be then re-sealed by the said Mr.       after the tendered ballot papers have been replaced therein.

(2) The petitioner and respondent, with their respective counsel, solicitors, agents, and enumerators shall be at liberty to be present at such inspection and re-count, which shall be continued from day to day until concluded, with power to adjourn subject to the consent of counsel being given on both sides.

(3) The said Mr.       shall reserve for the consideration of the judges appointed to try this petition such only of the before-mentioned ballot papers as may remain at the conclusion of the inspection and re-count in dispute between the parties.

(4) The petitioner and respondent shall be at liberty to take copies or photographs of the disputed ballot papers. The result of the said inspection and re-count shall be reported by the said Mr.       to the said judges.

The costs of and occasioned by this application and of the said inspection and the re-count shall be costs in the petition.

Fit for counsel.

Dated the       day of       19 .

---

48.

*Notice of Motion to fix Place of Trial.<sup>7</sup>*

*Where Proposed Place of Trial is Without the Boundary.*

[Title as usual.]

Take notice that this Court will be moved on       day the       day of       19       at 11 o'clock in the forenoon or so soon thereafter as counsel can be heard by Mr. A.B. of counsel for the above-named petitioner for an order that the trial of the above-named petition may take place in the

<sup>7</sup> See p. 223, *supra*.



Sessions House, C., which Sessions House is without the above-named borough of C.

And that the costs of and occasioned by this application may be costs in the said petition.

Dated the       day of       19 .  
    D.E. & Co.,  
    971, Manners Lane,  
    London, E.C.,  
    Agents for the said petitioner.

## 49.

*Affidavit to Support Foregoing Application.*

[Title as usual.]

I, D.E., of       , solicitor, make oath and say as follows:—

1. I am a partner in the firm of D.E. & Co., of       aforesaid, solicitors, the agents for the above-named petitioner, and I have the personal conduct of the said petition.

2. The hearing of the above-mentioned petition has been fixed by His Majesty's election petition judges to be tried at C., in the county of F., on day the       day of       19 .

3. The only suitable building in the town of C. is the Sessions House in which the county assizes are always held. The Sessions House, although situate in the town, is without the parliamentary borough of C.

4. To enable the mayor of C. as returning officer to arrange for the trial of the said petition to be heard at the said Sessions House, which, in my opinion, is the most convenient course both for His Majesty's judges and all parties attending the said trial, it is necessary to obtain the sanction of this honourable Court to the said trial taking place in the said Sessions House.

5. I have informed Messrs. G. & H., of       , the agents of the respondent, of the above circumstances, and at my request they have written consenting to the course proposed to be adopted. Their letter is now produced and shown to me marked D.E.<sup>1</sup>

Sworn, &c.

D.E.

## 50.

*Order on the Foregoing Application.*

[Title as usual.]

*Monday the 9th day of April, 19 .*

Upon reading the affidavit with exhibit thereto of D.E., and upon hearing Mr. A.B., counsel for the petitioner, upon his notice of motion to the Court, dated the       day of       19 , the respondent consenting:

It is ordered that the trial of this petition be held at the Sessions House, C., notwithstanding that the said Sessions House is outside the said borough of C.

By the Court.

## 51.

*Affidavit in Support of Application for Contempt of Court.*<sup>8</sup>

In the High Court of Justice.

King's Bench Division.

The Parliamentary Elections Act, 1868, and The Corrupt and Illegal Practices Prevention Act, 1883.

In the matter of the parliamentary election for the borough of A.B. between C.D., petitioner, and E.F., respondent.

I, G.H., of , in the county of London, solicitor, make oath and say as follows:—

1. I am a partner in the firm of G.H. & Co., practising at , who are the solicitors retained for the petitioner in the above-mentioned petition, and I have the personal conduct of the said petition.

2. The said petition was duly presented on the day of 19 .

3. The said petition was presented upon information which has been given to the petitioner to the effect that the charges made in paragraphs of the said petition were well founded.

4. In the course of the conduct of such petition it has been necessary for me to make further inquiries within the area of the above-mentioned borough, and to employ agents for the purpose of seeing witnesses and preparing proofs of the evidence to be given at the trial of the petition.

5. The J. & K. Journal Company, Ltd., is the proprietor, printer, and publisher of a newspaper known as "The J. & K. Journal," which has an extensive circulation throughout the said borough. I am informed, and verily believe, that one L.M., of , is and has been at all material times the editor and manager of the said paper. I have ascertained, by causing the file of the joint stock companies at Somerset House to be searched, that the said L.M. is also one of the managing directors of the said company.

6. In the issue of the said newspaper published on 19 , on p. thereof there were inserted in an article headed "A.B. Election Petition: Intense Partisan Feeling," three consecutive paragraphs entitled respectively, "Party Advice," "A Suggestion," and "What a Commission Means." A copy of the said issue of the said newspaper containing the said paragraphs is now produced and shown to me marked G.H.<sup>1</sup>

7. In the issue of the said newspaper published on 19 , on p. thereof there were inserted in a letter headed "The Petition," and addressed "To the Editor," two paragraphs, the first beginning and ending , the second beginning and ending . A copy of the said issue of the said newspaper containing the said two paragraphs is now produced and shown to me marked G.H.<sup>2</sup>

8. In the issue of the said newspaper published on 19 , on p. thereof there were inserted in an article headed "The Petition," two paragraphs, the first beginning and ending , and the second beginning and ending . A copy of the said issue of the said newspaper is now produced and shown to me marked G.H.<sup>3</sup>

9. In the issue of the said newspaper published on 19 , on p. thereof there were inserted in an article headed "The Petition," two passages, the first beginning and ending , and the second beginning and ending . On the same page of the said issue of the said newspaper under the heading "The Election Petition," was inserted

<sup>8</sup> The application is made *ex parte* in the first instance to a Divisional Court of the King's Bench Division for a rule *nisi* calling upon the alleged contemnor to show cause why he should not be committed for his alleged contempt; on a given date, usually the third day afterwards, the alleged contemnor appears to show cause against the rule *nisi* being

made absolute. See *Rex v. Cowling* (Bodmin Petition), "Times," March 10, 1906; *Rex v. Beeching* (Maidstone Petition), "Times," March 28, 1906; and *Rex v. Holmes* (Pontefract (1910)), "Times," Jan. 19. A Judge on the rota sitting at Chambers has no jurisdiction to commit. See *Macartney v. Corry*, 7 Ir. R. C. L. 242.

a paragraph beginning                      and ending                      . A copy of the said issue of the said newspaper containing the said passages and paragraph is now produced and shown to me marked G.H.<sup>4</sup>

10. In the issue of the said newspaper published on                      19                      , on p.                      thereof were inserted in an article headed "The Election Petition," "Coal Tickets," two consecutive paragraphs, the first beginning                      and the last ending                      . A copy of the said issue of the said newspaper containing the said paragraphs is now produced and shown to me marked G.H.<sup>5</sup>

11. The said company is also the proprietor, printer and publisher of another newspaper called the "O. P. Times and Chronicle," which is also extensively circulated in the said borough. The said L.M. is the editor and manager of the said paper. In the issue of the said paper for 19                      , on p.                      was published an article identical with that referred to in the preceding paragraph hereof. A copy of the issue of the said newspaper for 19                      is now produced and shown to me marked G.H.<sup>6</sup>

12. I am advised and verily believe that the said paragraphs and passages referred to in paragraphs 6, 7, 8, 9 and 10 herein, are calculated to prevent a fair trial of the said petition, to produce the idea that the petition was an unfounded one and likely to make people think it was a discreditable petition, and to create an atmosphere prejudicial to the petitioner, to incite people to withhold information, to cast doubt upon the evidence to be called, to seriously interfere with the due preparation of the case for the petitioner with the evidence to be given on his behalf at the trial and to prevent the witnesses from giving evidence for him, and are an offence against the administration of justice and a contempt of this honourable Court.

G.H.

Sworn, &c.

---

52.

*Affidavit in Opposition to Application for Contempt of Court.*

[Title as usual.]

I, L.M., of                      , editor and manager of the "J. & K. Journal," and of the "O. P. Times and Chronicle," make oath and say as follows:—

1. I have read what purports to be a true copy of the affidavit and exhibits thereto of G.H., sworn herein on the                      day of                      , 19                      , and in answer thereto I say as follows:—

2. Throughout the articles which are exhibited to the said affidavit and which were written and published by me in my capacity as editor and manager of the said papers, I desire to say that I never had the slightest intention to prejudice the fair trial of this petition or to commit any offence against the administration of justice.

3. Soon after the filing of the petition herein it was brought to my knowledge that a circular purporting to emanate from and signed by Messrs. G.H. & Co., the solicitors for the petition, which was in my opinion of a dangerous and misleading character, was being extensively distributed amongst a certain class of voters of the town. The said circular is still being distributed in A., a copy of it having been handed to me as recently as the 1st inst. by a voter whose sister informed me she had received it that morning. The said copy circular is now produced and shown to me marked L.M.<sup>1</sup>

4. In the belief that the distribution of such a document amongst such a class of persons would tend to the manufacture of evidence I considered that I was entitled to make comments upon such a matter, which in my view was one of the highest public interest.

5. I am informed and verily believe that the issue of such a document



after the date of the filing of a petition is altogether unusual if not unprecedented in election petitions.

6. If any of the comments which have been made can have in any way the effect of interfering with the fair trial of the petition or are in any way calculated to interfere with the due administration of justice, I beg to express my sincere regret and offer my most sincere and humble apology to this honourable Court.

The subject of the petition has excited very considerable public interest at A., and in all that has appeared in the newspapers, for which I am responsible, it was my desire that nothing said should overstep the legitimate bounds of fair criticism. If such bounds have been exceeded it is a matter of sincere regret to me, and in any case I undertake to abstain from all comments on the petition pending the trial of the said petition.

Sworn, &c.

L.M.

### 53.

#### *Notice of Motion<sup>9</sup> for Relief.*

In the High Court of Justice,  
King's Bench Division.

The Corrupt and Illegal Practices Prevention Act,  
1883.

In the matter of the parliamentary election for the  
A. division of the county of B. holden on the  
day of                      , 19                      .

Notice is hereby given, that on the                      day of                      , 19                      , at 10.30 in the forenoon, or so soon thereafter as counsel can be heard, an application will be made to the Hon. Mr. Justice C.                      , at the Royal Courts of Justice, Strand, London, on behalf of D.E., of                      , a candidate at the above-mentioned election, and on behalf of his election agent, F.G., of                      , for an order allowing that the failure of the said election agent to transmit to the returning officer the declaration respecting election expenses within the time allowed by section 33 of the Corrupt and Illegal Practices Prevention Act, 1883, may be an exception from the provisions of the said Act which would otherwise make the same an illegal practice, on the ground<sup>10</sup> that such omission arose from inadvertence [accidental miscalculation] or from some other reasonable cause of a like nature, and did not arise from any want of good faith on the part of the applicants or either of them.

Dated this                      day of                      19                      .

H.J. & Co.,

940, Temple Avenue,

London, E.C.,

Solicitors for the above-named  
Applicants D.E. & F.G.

### 54.

#### *Affidavit in Support of Application for Relief.<sup>11</sup>*

[Title as in Notice of Motion.]

I, D.E., of                      make oath and say as follows:—

1. I was a candidate at the above-mentioned election, which was held on

<sup>9</sup> In the absence of a petition the motion *may* be made to a Divisional Court of the King's Bench, although it is usually made to a Judge on the rota in open Court. See s. 56 of the Corrupt Practices Act, 1883. The application of

two or more persons may be included in the notice relating to the same election.

<sup>10</sup> The various grounds upon which the application is based must be set forth.

<sup>11</sup> The affidavit should be corroborated

the      day of      19      , and I was declared duly elected on the      day of      19      by a majority of 351.

2. One F.G. was my duly appointed election agent at the said election.

3. The last day for the transmission by my said election agent of the return and his declaration respecting election expenses under section 33 of the above-mentioned Act was the      day of      , 19      .

4. The return respecting election expenses was duly made out by my said election agent and was transmitted by him by delivery by hand, together with his declaration respecting election expenses, to K.L., the returning officer at      on the      day of      19      .

5. My said agent made the declaration mentioned in the preceding paragraph before a commissioner of oaths at      instead of before a justice of the peace as required by the said Act. He has since informed me, and I verily believe that the error arose from his supposing that the declaration required by the said Act was a statutory declaration.

6. My said agent's error was not discovered by him or known to me until the      day of      , 19      , when he received a letter from the said K.L., the returning officer at the said election, pointing out the error.

7. My said election agent thereupon at once informed me of the error and saw the returning officer. On the same day my said agent made the declaration respecting election expenses before a justice of the peace and transmitted the said last-mentioned declaration personally to the returning officer in the afternoon of      only a few hours after the return and declaration would have reached the returning officer if transmitted within the time allowed by the said Act.

8. The failure of my said agent to transmit the declaration within the time allowed by the said Act and his error hereinbefore mentioned, arose from inadvertence, and not from any want of any good faith on my part or his.

9. I humbly petition that this honourable Court may make an order allowing that the failure by my said agent to make the declaration respecting election expenses within the time perscribed by the said Act may be an exception from the provisions of the said Act, which would otherwise make the same an illegal practice.

Sworn, &c.

55.

*Subpœna ad Test.*<sup>12</sup>

In the High Court of Justice,  
King's Bench Division.

The Parliamentary Elections Act, 1868.

The Corrupt and Illegal Practices Prevention Act, 1883.

In the matter of a petition from the      of      . Wherein  
petitioner      and respondent.

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to

Greeting:—We command you to attend before two of the judges on the rota for the trial of election petitions in England and Wales, at the Court for the trial of an election petition presented from      to be holden before the said judges at      on      day, the      day of      19      , at the said place and day, at the hour of      in the      noon, and so from day to day

if possible, and the applicant's solicitor should file an affidavit to the effect that the necessary notices of this application have been duly given. For another precedent see *Ex parte Clark* (1885), 52 L. T. 260.

<sup>12</sup> The *subpœna* remains in force from

its issue until the trial, O. 37, r. 34a. This *subpœna* "shall contain three names where necessary or required, but may contain any larger number of names," O. 37, r. 29. The fee is 5s. for every set of three names.

until the above petition is tried, to give evidence in the above-named petition on behalf of the

Witness Lord High Chancellor of Great Britain, the day of  
in the year of our Lord one thousand nine hundred and

This subpoena was issued by of agent for of solicitor  
for the above-named.

56.

*Subpœna duces tecum.*<sup>13</sup>

In the High Court of Justice,  
King's Bench Division.

The Parliamentary Elections Act, 1868.

The Corrupt and Illegal Practices Prevention Act, 1883.

In the matter of a petition from the of . Wherein petitioner, and respondent.

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, to

Greeting:—We command you to attend before two of the judges on the rota for the trial of election petitions in England and Wales, at the Court for the trial of an election petition presented from to be holden before the said judges at on day, the day of 19 , at the said place and day, at the hour of in the noon, and so from day to day until the above petition is tried, to give evidence in the above-named petition on behalf of the , and also to bring with you and produce at the time and place aforesaid

Witness,  
Lord High Chancellor of Great Britain, the day of in the year  
of our Lord one thousand nine hundred and

57.

*Affidavit for Withdrawal of Petition.*<sup>14</sup>

In the High Court of Justice,  
King's Bench Division.

Parliamentary Elections Act, 1868.

Election Petition for

petitioner.  
respondent.

Affidavit of

I of , in the county of , the above-named respondent make oath and say as follows:—

That to the best of my knowledge, information and belief the withdrawal of, or application to withdraw, this petition, is not the result of any corrupt arrangement, or in consideration of the withdrawal of or application to withdraw, any other petition.

The ground on which the petition is withdrawn is (*setting forth the ground*).

<sup>13</sup> This *subpœna* remains in force from its issue until the trial, O. 37, r. 34a. Great care should be taken to

include all necessary documents.

<sup>14</sup> See Corrupt Practices Act, 1883, s. 41; pp. 207, 321, *supra*.



58.

*Special Case.*

In *Britt v. Robinson (Bristol)*<sup>15</sup> Bramwell, B., stated a case in the following form:—

“At the last Parliamentary election for the city of B., R. was returned. A petition against his return was duly presented, and tried before me on the 23rd, and four following days, of May. I have thought it right to reserve, for the opinion of the Court of Common Pleas, a question which arises as follows.”

*(Here the point was stated.)*

“The parties have agreed to my stating this case as a way of reserving the question; but if necessary, I must further report to the Court as the Court may require.

“(Signed) G.B.”

59.

*Lists of Objections to Votes on Scrutiny.*

In the High Court of Justice,  
King's Bench Division.

Parliamentary Elections Act, 1868.

County of

In the matter of the petition by A.B., petitioner,  
and  
C.D., respondent.

The following is the list of voters who voted for C.D. at the last election for the county of and whose votes are intended to be objected to by and on behalf of the petitioner, with the grounds of objection set out against the names of such voters.

## CLASS 1.

Number on Register.	Name of Voter. Surname first.	Objection.
101	George Brown	The votes of each of these voters will be objected to on the ground that before the said last election for the county of such voter was guilty of bribery within the meaning of section 2 of the Corrupt Practices Prevention Act, 1854. <sup>16</sup>
53	Arthur Smith	
98	Alfred Robinson	
731	Thomas Green	
558	Henry Wood	

<sup>15</sup> (1870), L. R. 5 C. P. 503; 2 O. & H. 29. For other forms of special cases see *Trench v. Nolan* (1872), Ir. Rep. 6 Com. Law, 464; *Tipperary* (1875), 3 O. & H. 41; *Athlone* (1874), 2 O. & H. 189; *Mayo*, *ib.* 193; *Drogheda*, *ib.* 203; *Davis v. Lord Kensington* (1873), L. R. 9 C. P. 720; *Stowe v. Jolliffe* (1874),

L. R. 9 C. P. 734; *Malcolm v. Parry*, *ib.* 610; *Pontardawe*, [1907] 2 K. B. 313.

<sup>16</sup> If the votes of a number of electors are objected to on the same ground, they can be bracketed together and one objection specified as above. *Weymouth* (1842), B. & A. 108.

## CLASS 2.

Number on Register.	Name of the Voter.	Objection.
		The vote of each of these voters will be objected to on the ground that he was guilty of treating at the said election in order to induce voters to vote at the said election for the said respondent.

## CLASS 3.

Number on Register.	Name of the Voter.	Objection.
		The votes of each of these voters will be objected to on the ground that he unduly influenced certain voters to vote at the said election for the said respondent, or to refrain from voting for the said petitioner.

## CLASS 4.

Number on Register.	Name of the Voter.	Objection.
		The votes of each of these voters will be objected to on the ground that he was unduly influenced to vote at the said last election for the said respondent, or to refrain from voting for the said petitioner.

## CLASS 5.

Number on Register.	Name of the Voter.	Objection.
		The votes purporting to be the votes of each of these voters will be objected to, upon the ground that such voters did not actually and personally vote at the said election, but were dead, absent, or otherwise incapable of voting at the time of such election, and that such voters were, each of them, illegally personated by some other person who falsely assumed to vote, and did vote, in the name of such voter for the respondent.

## CLASS 6.

Number on Register.	Name of the Voter.	Objection.
		The votes of each of these voters will be objected to on the ground that at the time of the last election such voter was so intoxicated as to be <i>non compos mentis</i> , and therefore incapable of voting at the said election.

CLASS 7.

Number of Ballot-paper.	Objection.
	These ballot-papers will be objected to on the ground that they are not marked with the official mark.

CLASS 8.

Number of Ballot-paper.	Objection.
	These ballot-papers will be objected to on the ground that they are unmarked or void from uncertainty.

CLASS 9.

Number of Ballot-paper.	Objection.
	These ballot-papers will be objected to on the grounds that they are written or marked in such a way that the voter can be identified.

CLASS 10.

Number on Register.	Name of the Voter.	Objection.
		The petitioner will claim to strike off from the votes given to the respondent one vote in respect of the vote of each of these persons on the ground that the respondent, a candidate at the said election, was by himself or his agent guilty at the said election of bribery in respect of them within the meaning of sect. 25 of the Ballot Act, 1872.

CLASS 11.

Number on Register.	Name of the Voter.	Objection.
		The petitioner will claim to add the votes of each of these voters on the ground that such voter tendered his vote at the said last election and had a valid right and title to vote thereat.

To Mr.  
Agent for the respondent  
[or petitioner], C.D.  
Dated this       day of       19 .  
L.E.

Yours, &c.,  
Agents for the petitioner  
[or respondent], A.B.



## 60.

*Notice to Produce.*

## Parliamentary Elections Act, 1868.

In the matter of a petition of A.B., complaining of the election and return [*or as the case may be*] of C.D., Esquire, for the county [*or as the case may be*] of .

Take notice that the petitioner [*or respondent*] hereby requires you to produce and show to the court on the trial of this petition all books, papers, letters, copies of letters, and all writings, and other documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in the said petition, and particularly the documents in the schedule hereunder written.

## SCHEDULE above referred to.

Date.	Description of Document.

Dated this      day of      , 1906.

Yours, &c.,

Agent [*or solicitor*] to the petitioner

To      [*or respondent.*]

Agent [*or solicitor*] for the respondent [*or petitioner*].

And to C.D. or A.B.,

The above-named respondent [*or petitioner*].

## 61.

*Oath to be taken by Member of Parliament.<sup>17</sup>*

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Fifth, his heirs and successors, according to law.

So help me God.

## 62.

*Shorthand Writer's Oath on Trial of Petition.<sup>17</sup>*

I will faithfully and truly take down the evidence given at the trial and from time to time as occasion requires write or cause the same to be written in words at length.

So help me God.

<sup>17</sup> This form is the oath set forth in the Promissory Oaths Act, 1868, and substitutes that formerly prescribed by the Parliamentary Oaths Act, 1866, as amended by the Office and Oaths Act, 1867. By the Oaths Acts, 1888 and 1909, a person objecting on religious grounds to be sworn may affirm in the following manner:—"I, A.B., do solemnly, sincerely, and truly declare and affirm," and then proceed with the words of the prescribed oath, omitting the words of

imprecation or calling to witness. By s. 2 (1) of the Act of 1909 it is provided that: "Any oath *may* be administered and taken in the form and manner following: The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words 'I swear by Almighty God that . . . .', followed by the words of the oath prescribed by law."

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THE END.









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